

Form A

**IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE,
2ND COURT, JHARGRAM**

**PRESENT: ARVIND MISHRA,(J.O. Code No. WB 00876)
Additional Sessions Judge, 2nd Court, Jhargram**

Date of the Judgement: 18th day of March, 2026

Case No: Sessions Trial No. 01(12)2016
Sessions Case No. 28(07)2015
CIS No.- 248/2017
GR Case No. 715/2013

Jhargram PS Case No. 278/2013 dtd. 11/11/2013

Details of FIR/Crime and Police Station : Jhargram PS Case No.
278/2013 dtd. 11/11/2013 U/s. 302/201 IPC

Complainant	Chamru Murmu
REPRESENTED BY	Shri Prabir Pal (Public Prosecutor-in-charge)
ACCUSED	1. Binod Hansda, (A1) S/O- Late Tepa Hansda, Age 55 years, resident of village-Andharisol, Police Station- Jhargram, District- Jhargram
REPRESENTED BY	Advocate Shri Nabendu Ghosal

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FORM B

Date of Offence	11/11/2013
Date of FIR	11/11/2013
Date of Charge-sheet	31/01/2015
Date of Framing of Charges	05/12/2016
Charge Framed under section	302/201 IPC
Date of commencement of Evidence	31/08/2018
Date on which Judgment if reserved	Not applicable
Date of the Judgment	18/03/2026
Date of the Sentencing Order, if any	19/03/2026

Accused details

Rank of the Accused	Name of accused	Date of arrest	Date of release on Bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of Detention Undergone during Trial for purpose of Section 428, Cr.P.C
A1	Binod Hansda	12/11/2013	14 th July, 2014	302/201 IPC	Convicted	1. U/s. 201 IPC for imprisonment for five (05) years for convict and fine of Rs. 5000/- for convict i.d to suffer simple imprisonment for one month; 2. U/s. 302 IPC for rigorous imprisonment for life for convict and fine of Rs. 10,000/- for convict i.d to suffer simple imprisonment for one month;	244 days

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Form C

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES A.

Prosecution Witness:

RANK	NAME	NATURE OF EVIDENCE
PW-1	Deben Baskey	Witness
PW-2	Sunil Kumar Murmu	Witness
PW-3	Manik Hansda	Witness
PW-4	Anamul Haque Molla	Police Witness
PW-5	Thandamoni Hansda	Witness
PW-6	Birsingh Murmu	Witness
PW-7	Sombari Murmu	Witness
PW-8	Baidyanath Murmu	Witness
PW-9	Dhananjay Mukherjee	Police Witness
PW-10	S.I. Chandi Charan Bera	Investigating Officer
PW-11	Hari Sikdar	Investigating Officer
PW-12	Dr. Pranab Ray	Medical Witness

B. Defence Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE
DW1	NIL	Not applicable

C. Court Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE
CW1	NIL	Not applicable

LIST OF PROSECUTION /DEFENCE/COURT EXHIBITS A.

Prosecution:

Sr. No.	Exhibit Number	Description
1	Exbt. 1	Entire written complaint written by PW-1 (2 sheets)
2	Exbt. 2	Signature of PW-1 upon seizure list dated 15/11/2013 (1 sheet)
3	Exbt. 3	Signature of PW-4 in the seizure list dated 11/11/2013
4.	Exbt. P-4/PW-8	Signature of PW-8 on seizure list dated 15/11/2013
5.	Exbt. P-5/PW-8	Signature of PW-8 on the label of M.O-1
6.	Exbt. P-6/PW-9	Formal FIR
7.	Exbt. P-7/PW-10	Rough Sketch Map of P.O
8.	Exbt. P-7/1/PW-10	Index of rough sketch map of P.O.
9.	Exbt. P-3/1/PW-10	Seizure list dated 11/11/2013
10.	Exbt. P-8/PW-10	A portion of leading statement of accused
11.	Exbt. P-2/1/PW-10	Seizure list dated 15/11/2013
12.	Exbt. P-5/1/PW-10	Label bears signature of PW-10 upon Exbt. M.O.-1/PW-8
13.	Exbt. P-3/1/PW-10	Seizure list dated 11/11/2013
14.	Exbt. P-9/PW-10	Receipt regarding sending alamat to FSL
15.	Exbt. P-10/PW-10	Dead body challan dated 11/11/2013
16.	Exbt. P-2/2/PW-10	Signature of accused Binod Hansda on the body of seizure list dated 15/11/2013
17.	Exbt. P-11/PW-10	Portion of the statement regarding recovery u/s 27 of Indian Evidence Act
18.	Exbt. P-12/PW-12	Carbon copy of postmortem examination report dated 11/11/2013

B. Defence:

Sr. No.	Exhibit Number	Description
1	NIL	N.A.

C. Court Exhibits:

Sr. No.	Exhibit Number	Description
1	NIL	N.A.

D. Material Objects:

Sr. No.	Material Object Number	Description
1	Exbt. M.O. I/PW-8	One axe
2	Exbt. M.O. II/PW-10	'T'-shirt
3	Exbt. M.O. III/PW-10	Half-pant

This Court delivers the following

JUDGEMENT

1) This criminal proceeding was originated from the written complaint dated 11/11/2013 lodged by Shri Chamru Murmu, son of Janu Murmu of Village Aandharisole, Police Station-Jhargram, District- West Medinipur (now Jhargram) to the effect that his brother Behari Murmu aged 26 years has left the house at about 08PM in the evening on 09/11/2013 and did not return home thereafter. In spite of vigorous search he could not be traced out. Today on 11/11/2013 at about 07AM in the morning he came to learn that a body is lying on a paddy field of Gurucharan Hansda situated adjacent to the moram road running from Dubrajpur to Chandri. Thereafter, he identified the body of his brother and found injury by sharp-cutting weapon on his head and neck. Thereafter, on inquiry he came to learn that on 09/11/2013 his brother Behari Murmu went to the house of his neighbour Binod Hansda and it was about 08PM in the night. He assumes that Binod Handa under the influence of a conspiracy and premeditated mind assaulted his brother by sharp axe (kural) and murdered him.

2) On the basis of said written complaint, Jhargram PS Case No.

278/2013 dtd. 11/11/2013 U/s 302/201 of Indian Penal Code was registered and Sub Inspector Chandi Charan Bera was asked to investigate the allegations made in the complaint. Hence, this case.

3) After completion of investigation, Charge-sheet was submitted vide Jhargram PS charge-sheet No. 22/2015 dated 31/01/2015 u/s. 302/201 IPC against the accused Binod Hansda.

Result of investigation

4) During investigation of the case P.O. (Place of occurrence in short) was visited by the I/O and witnesses were examined and their statements were recorded u/s 161 Cr.P.C. The dead body of victim namely Behari Murmu was sent for postmortem examination. The Autopsy Surgeon who conducted postmortem examination has opined after PM examination over the body of the deceased that in his opinion the death was caused due to shock and hemorrhage as a result of the injuries mentioned in the postmortem examination, and are anti-mortem and homicidal in nature and the weapon used was heavy sharp-cutting weapon. Further during investigation accused Binod Hansda was taken on police remand and it appears that he has made a disclosure statement which has been marked as exhibit in this case and on the basis of said statement the iron axe with bamboo stick was seized.

5) After completion of all the formalities, Ld. Additional Chief Judicial Magistrate, Jhargram committed the case to the Court of Ld. Additional Sessions Judge, 1st Court, Jhargram and Ld. Additional Sessions Judge, 1st Court, Jhargram transferred the case to this Court for appearance of the accused persons and for consideration of charge. On 05/12/2016 charges were framed against the accused Binod Hansda u/s. 302/201 IPC which was read over and explained to him in Bengali language to which he pleaded not guilty and claimed to be tried by saying “Ami Nirdoshi”. Hence, this trial.

6) After completion of recording of evidence of the prosecution

witnesses the accused has been examined U/s. 313 Cr.P.C to which he pleaded his innocence and denied the prosecution case as well as evidence brought by the prosecution and he also declined to adduce any defence witness.

7) -: Points For Decision/Consideration:-

1. Whether the accused person committed any offence punishable U/s. 302/201 of Indian Penal Code and are liable to be punished for the same?

8) Evidence of the prosecution witnesses:-

In this case it appears that the prosecution witness Sunil Kumar Murmu (PW-2), Manik Hansda (PW-3), Thandamoni Hansda (PW-5) have been declared hostile and prosecution was permitted to cross-examine its own witness. So, before entering into the arena of discussion of prosecution witnesses (private witnesses) I would first like to discuss the evidence tendered by autopsy surgeon Dr. Pranab Roy who was examined in this case as PW-12.

9) PW-12 Dr. Pranab Roy has stated in his examination-in-chief and his evidence as it appears from his deposition is reads thus:-

“On 11/11/2013 I was posted as Medical Officer at Jhargram District Hospital. On 11/11/2013 in connection with Jhargram PS UD Case No. 191/13 dated 11/11/2013 I held postmortem examination over the dead body of Bihari Murmu, 26 years, Hindu, Male, son of Shri Janu Murmu of village Adhanrisol, P.O. Pukuria, PS-Jhargram, brought and identified by Constable/813 Molla Annanul Hawk of Jhargram PS.

On examination I found the following injuries:-

1. Deep sharp-cut injury over left posterior auricular area just at the level of left ear lobule cut the injuries slightly downwards anteriorly measuring 8cm x .5cm into all the soft tissue structures cut at the area and left mastoid process partially cut superficially hemorrhage plus.
2. Deep sharp-cut injury over left side of neck starting just below left angle of mandibulate progressing very slight upwards and posteriorly common

carotid artery cut anterior laterally thyroid cartilage cut left laterally measuring 8.5cm x .75cm hemorrhage cut.

3. Deep sharp-cut injury just .75cm below number two injuries a little posteriorly measuring 7.5 cm x .5cm and all the soft tissue fractures cut left sternomastoid cut hemorrhage plus.

4. Deep sharp-cut injury at the level of mid thyroid cartilage starting just lateral to midline progressing transversely all the soft tissues structures cut left sternomastoid cut left jugular vein cut.

In my opinion, death was caused due to shock and hemorrhage, as a result of above-mentioned injuries, anti-mortem and homicidal in nature.

The weapon used was heavy **sharp-cutting weapon**.

In respect of said postmortem examination I prepared a report. This is the carbon copy of said postmortem examination report bearing my handwriting and signature with office seal and date. (Carbon copy of postmortem examination report dated 11/11/2013 is marked as **Exbt. P-12/PW-12**).

Cross-Examination:-

The Jhargram PS Case No. 278 of 2013 dated 11/11/2013 is not mentioned in the PM report.

The body was not identified by any family member of the deceased.

Not a fact that the injuries mentioned at column No. 5 of the PM report were mentioned as per inquest report.

The length and breadth of the four injuries were mentioned.

The measurement of depth of injuries is not mentioned in the PM report.

I am not agree with the suggestion that if any injury is committed by sharp-cutting weapon then depth of the injury will be more than length and breadth of the injury.

No weapon was shown to me by which injuries were inflicted before post-mortem examination.

In my opinion the death was 30 hours to 42 hours, prior to PM

examination.

The rectum temperature is not taken before PM examination.

The viscera of the deceased was not preserved in this case.

It is fact that the death was caused due to shock and hemorrhage as written in PM report.

There are different types of heavy weapon.

It is not a fact that if any body is lying 30/40 hours under open sky, then it is not possible to assess the actual injuries.”

10) So, from the above evidence of autopsy surgeon it is very much clear before the Court that Bihari Murmu died due to shock and hemorrhage and as a result of above-mentioned injuries, which in his opinion were anti-mortem and homicidal in nature and the weapon used in inflicting the said injuries was heavy sharp cutting weapon.

11) Now this Court is required to look into the evidence of other prosecution witnesses who have been cited as Charge-sheet witnesses in this case and were tendered by the prosecution, as prosecution witness.

12) The attention of prosecution witnesses, who were declared hostile, as named above, were drawn to the previous statements recorded and reduced into writing at the time of investigation by Investigating Officer, with an intention to contradict them, as per the settled principle as laid down by Hon'ble Apex Court in catena of decisions.

13) The evidence of Deben Baskey (PW-1) reads thus as it appears from the deposition sheet:-

“The defacto complainant namely Chamru Murmu is known to me. He is the resident of our village Aandharisole under P.S.-Jhargram.

I am the scribe of the written complaint. I wrote the FIR as per instruction of one Chamru Murmu. The FIR tenders to the witness. This is the FIR which was written by me under my signature. After completion of writing the contents of the same was read over to Chamru Murmu. After understanding the contents of the same he put his LTI in my presence and I

also put my signature upon the FIR in his presence as scribe. Let the FIR be marked as Exbt. 1.

The incident took place 03 years ago (approx). I heard the incident from Chamru Murmu. He told me that his brother namely Bihari Murmu had illicit relationship with the wife of accused Binod Hansda. He also told me that the accused Binod committed murder of his brother Bihari due to the said illicit relationship. The accused Binod is present before this Court and identified. Police interrogated me in this case. The police visited our village after the incident and seized some articles.

The seizure list dated 15/11/2013 tenders to the witness. This is the said seizure list which bears my signature. Let the signature upon the seizure list be marked as Exbt. 2.

XXX:-Police did not interrogate me in this case. I have no personal knowledge in c/w this case. Nothing has been seized by the police in my presence. I cannot say what articles seized by police. The defacto complainant already passed away before one year (approx) from this date. I had no prior knowledge as regards to the alleged illicit relationship with Bihari Murmu with the wife of accused Binod. I cannot say the contents of the seizure list. Not a fact that Chamru Murmu did not state me anything in c/w this case. Not a fact that I am deposing falsely.”

14) The evidence of Sunil Kumar Murmu (PW-2) reads thus as it appears from the deposition sheet:-

“I know Bihari Murmu. He died six years ago. He was found dead in his plot of land with mark of injuries in his body. I cannot say who killed him. Police interrogated me. Binod Hansda is present in Court.

Declared hostile upon the prayer of the prosecution.

Cross-Examination XXX:- It is fact that I told police that wife of Binod Hansda used to sell illicit liquor and Behari Murmu used to visit her house to drink liquor. Not a fact that I told police that the wife of Binod Hansda had illicit relation with Behari Murmu. Not a fact that I told police that

when Binod Hansda came to know about the relation he killed Behari Murmu. Not a fact that I deposed falsely to save the accused person.

Cross-Examination XXX:- It is fact that I do not know how Behari Murmu died. I know the accused as we are co-villagers.”

15) The evidence of Manik Hansda (PW-3) reads thus as it appears from the deposition sheet:-

“I know Bihari Murmu. He is no more and died four years ago. He was found dead in the plot of land being murdered by somebody. My house is at a distance of 1KM from the P.O. I cannot say who killed him. Police interrogated me and asked me whether I know Behari Murmu or not. Binod Hansda is present in Court.

Declared hostile upon the prayer of the prosecution.

Cross-Examination XXX:- I do not remember whether I told police or not that Behari Murmu was in illicit relation with the wife of Binod Hansda or not.

Not a fact that I told police that I heard cries in the night in the house of Binod Hansda.

Not a fact that I deposed falsely to save the accused person.

Cross-examination XXX:-

Declined.”

16) The evidence of **Enamul Haque Molla** (PW-4) reads thus as it appears from the deposition sheet:-

“I am a retired constable of police. On 11/11/13 I was posted at Jhargram PS as constable of police. On that day I accompanied the officer for postmortem duty. The dead body was brought to Jhargram morgue, where postmortem was conducted and blood-stained soil and some other articles were seized after preparing seizure list. I put my signature in the seizure list. This is my signature in the seizure list (marked Exbt.3).

Cross-Examination XXX:- It is fact that the seizure list was prepared in the Jhargram PS and I signed in the seizure list in the PS.”

17) The evidence of Thandamoni Hansda (PW-5) reads thus as it appears from the deposition sheet:-

“I knew Chamru Murmu. He is no more. I knew Behari Murmu. He is no more. The incident occurred about six years ago. The accused Binod Hansda is my husband. I do not know how Behari Murmu died. Police did not interrogate me.

Declared hostile upon the prayer of prosecution.

Cross-Examination XXX by prosecution:-

Not a fact that I told police that I run a small liquor business. Not a fact that I told police that Behari Murmu used to visit our house to drink liquor. Not a fact that I told police that a relation grew between us and I am unable to disclose about the same. Not a fact that I told police that my husband came to know about this. Not a fact that I told police that on 09/11/2013 in the evening when Binod was in my house I asked Behari to go away from my house and he went but he came back at 8 PM and said that he will go for fishing. Not a fact that I told police that my husband before leaving the house took an axe and in the middle of night he came alone and when I asked him Behari Murmu, he did not reply and slept. Not a fact that I told police that on 11/11/2013 the dead body of Behari Murmu was seen in the paddy field of Guru Charan Hansda. Not a fact that as my husband is the accused in this case I deposed falsely.

Cross-Examination XXX :-

I have one son and three daughters and the elder one is daughter who is twenty years old. It is fact that the children reside with me and my husband. I knew Behari as he is my co-villager. I cannot say how he died or who killed him. Police never interrogated me.”

18) The evidence of Birsingh Murmu (PW-6) reads thus as it appears from the deposition sheet:-

“I know Behari Murmu who died about twelve years ago from today. He used to work for gain in a company and on returned to home, he also used to work in our village. I have heard that he was murdered by axe and

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sharp cutting weapon. He was murdered on 13/11/2013. He was murdered by Binod Hansda. His body was lying at the paddy field of Gurucharan Hansda.

Binod Hansda is present today in the court room. Witness identifies the accused.

I had been to the place of occurrence and was present at the time of inquest. I put my signature on the inquest report dated 11/11/2013. I do not want to say anything more.

Cross-Examination

Bihari Murmu is my younger brother. Sombari Murmu is mother of Bihari Murmu. I did not see the incident. I have only heard about the incident.. I know what is written in the inquest report.

Not a fact that I am deposing false as because Behari Murmu was related with me.”

19) The evidence of Sombari Murmu (PW-7) reads thus as it appears from the deposition sheet:-

“ Behari Murmu was my son. I cannot say how many years ago he died. My son Behari Murmu was called by Binod Hansda from my home for work at his paddy field. He was again called and taken by Binod Hansda in the evening and thereafter my son did not return home. Binod Hansda had interaction with my son Behari Murmu and told that go with me and we will catch fish and have feast in the night and thereafter my son Behari Murmu accompanied with Binod Hansda. Thereafter, Binod Hansda returned home but my son did not return. My son Behari Murmu's body was found at the paddy field of Gurucharan Hansda having severe cut injuries on her forehead and neck. Binod Hansda murdered my son.

Binod Hansda is present today in the court room. Witness identifies the accused.

Chamru Murmu was my elder son who submitted the complaint. He is no more at present.

Cross-Examination

My house is intervened by 4/5 houses from the house of Binod Murmu. At present I cannot remember the date, month and year of the incident.

Not a fact that I heard only from others that Binod Hansda called and took my son with him.

Not a fact that my statement that Binod Hansda called and took my son with him is untrue statement.

Not a fact that my statement in examination in chief, "He was again called and taken by Binod Hansda in the evening and thereafter my son did not return home. Binod Hansda had interaction with my son Behari Murmu and told that go with me and we will catch fish and have feast in the night and thereafter my son Behari Murmu accompanied with Binod Hansda", is untrue statement.

I did not inform about the incident either to police or panchayat. I did not accompanied my son Behari Murmu with Binod Hansda. I heard about the incident of murder of my son in the next morning.

Not a fact that I am deposing false.”

20) The evidence of Baidyanath Murmu (PW-8) reads thus as it appears from the deposition sheet:-

“I knew Behari Murmu. He is no more at present. I know Binod Hansda of this case who is present in the court today (identified).

Police took Binod Hansda to his house and I was called there. Thereafter, Binod showed to the police the axe by which he committed the offence. I also saw Binod showing the said axe to police. Police seized the same.

I thereafter put my signature on the seizure list dated 15/11/2013. Let the signature be marked as **Exbt. P-4/PW-8**.

The alat is shown to the witness. This is the said axe which was seized by the police from the house of Binod Hansda as per his identification in my present. Witness identifies the alat. Let it be marked

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as **Exbt. MO-I/PW-8**. This is my signature on the label and copy of label which was prepared at the place of seizure in my presence and I put my signature on the same. Let the signature of PW-8 on the label of MO-I be marked as **Exbt. P-5/PW-8**

I was examined by the IO.

Cross-Examination

Behari Murmu is my nephew by village courtesy. My house is intervened by one house from the house of Binod Murmu and is about 200ft distance from my house. The said house belongs to Chuniram. Binod Hansda's family is consist of his wife, one son and three daughters and they reside under the same roof. I cannot remember the date at present when police called me at the time of seizure. Police called me from the road to accompany them to the house of Binod Murmu. I put my signature where I met with the police which is village road. I do not know what is written in the said seizure list and label. Behari Murmu was very much known to me. Not a fact that for that reason I am deposing false.”

21) The evidence of Dhananjay Mukherjee (PW-9) reads thus as it appears from the deposition sheet:-

“On 11/11/2013 I was at Jhargram PS. On that very day one complaint was received from Chamru Murmu and on the basis of said complaint formal FIR was drawn by me as per instruction of I/C, Jhargram PS. This is the said formal FIR which was prepared by me. Let the formal FIR be marked as **Exbt. P-6/PW-9**.

This is my endorsement on the complaint which was received from Chamru Murmu. Let the formal endorsement be marked as **Exbt. P-1/1/PW-9**.

Cross-Examination

I have no personal knowledge regarding the matter except drawing the formal FIR. One UD case was registered prior to recording of this formal FIR and I have no personal knowledge regarding the matter except drawing the formal FIR.”

22) The evidence of Chandi Charan Bera (PW-10) reads thus as it appears from the deposition sheet:-

“Presently, I am retired from my service as Sub-Inspector of Police. On 11/11/2013 I was posted at Sub-Inspector of Police at Jhargram police station. On that very day one complaint was received from Chamru Murmu and after drawing the formal FIR I was entrusted with the charge of investigation.

I first go through the complaint and then proceeded to the place of occurrence and prepared rough sketch map along with index. Let the rough sketch map be marked as **Exbt. P-7/PW-10** and index be marked as **Exbt. P-7/1/PW-10**.

I examined the available witnesses in this case.

I seized blood stained and controlled earth by preparing seizure list dated 11/11/2013 where I put my signature. (Seizure list dated 11/11/2013 be marked as **Exbt. P-3/1/PW-10 as a whole**).

Thereafter, I arrested the accused Binod Hansda.

I also took PC of the said accused.

After taking the accused Binod Hansda in PC by the order of court, I recorded his disclosure statement and leading to the said disclosure statement, he was taken to his house and on his identification the offending axe was seized by me on proper seizure list. This is the said leading statement.

This is the said portion of leading statement and the same is marked as **P-8/PW-10**.

On the basis of leading statement of the accused in PC he was taken to his house and the said axe was seized by me on proper seizure list dated 15/11/2013 where I put my signature. (Let the entire Seizure list dated 15/11/2013 be marked as **Exbt. P-2/1/PW-10**). Let the signature of accused Binod Hansda on the body of Seizure list dated 15/11/2013 be marked as **Exbt. P-2/2/PW-10**.

Mat Object Exbt. M.O.-I/PW-8 is shown to the witness.

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This is the said label on Mat Object Exbt. M.O.-I/PW-8 which was prepared by me and bears my signature. Let the label be marked as **Exbt. P-5/1/PW-10** as a whole along with signature of the witness. The label also bears the signature of accused Binod Hansda which was seized as per his disclosure statement.

This is the said axe which was seized by me on proper seizure list and has been marked as **M.O. I./PW-10**.

I sent the blood stained earth and controlled earth to FSL, Kolkata for chemical examination.

This is the wearing apparels (T-shirt and one deep green half-pant of the deceased Behari Murmu) which was seized by me on the strength of seizure list dated 11/11/2013 which was prepared by me in my own handwriting. Let the seizure list dated 11/11/2013 be marked as **Exbt. P-3/1/PW-10** and the alamt i.e. T-shirt and half-pant as **M.O. II./PW-10** and **M.O. II./PW-10**.

This is the said receipt regarding sending of alamt to FSL. Let it be marked as **P-9/PW-10**.

Thereafter, the body was sent for postmortem examination as Jhargram S.D. hospital through a dead body challan dated 11/11/2013 through Constable/813 Molla Anamul Haque. The postmortem was conducted and I collected the said report. Let the dead body challan dated 11/11/2013 be marked as **P-10/PW-10**.

Thereafter, on being transferred I handed over the CD of this case to I/C, Jhargram PS on 06/12/2014.

After being entrusted with the charge of investigation of this case by I/C, I recorded one GD but I do not have the said GD reference. I did not seize on proper seizure list any paper regarding UD case as mentioned in the formal FIR. But I collected the same. Separately, I did not record any statement of de-facto complainant in writing, but she was examied verbally.

(**Exbt. P-7/PW-10** and **Exbt. P-7/1/PW-10** is referred).

Description of the place of occurrence where the dead body was found viz. J.L. number, Khatian number, Mouza have not been mentioned in the body of sketch map. Guru Charan Hansda has not been examined in this case.

(Statement of Sombari Murmu is referred to the witness)

It is fact that it is not stated by Sombari Murmu during her examination by I/O that his son called by Binod Hansda at his home.

[Statement of Sombari Murmu is referred to the witness]

The witness stated that Sombari Murmu did not state before him during investigation that “Binod Hansda had interaction with her son Behari Murmu and told to go with him and they will catch fish and have feast in the night and thereafter her son Behari Murmu accompanied Binod Hansda”.

The witness stated that Sombari Murmu did not state before him during investigation that “he was again called and taken by Binod Hansda in the evening”.

It is fact that wife of Behari Murmu was not cited as witness to the seizure.

Not a fact that I did not prepare seizure list in presence of available witnesses.

Not a fact that report of FSL was not collected.

(**Examination-in-chief** of PW-10 Chandi Charan Bera is recall on oath today i.e. on 18th December, 2025).

[The statement of Sunil Kumar Murmu who was examined as PW-2 has been referred to the witness]

It is fact that witness Sunil Kumar Murmu during investigation has stated in his statement u/s. 161 Cr.P.C that wife of Binod Hansda used to sell illicit liquor and Behari Murmu used to visit her house to drink liquor.

It is fact that witness Sunil Kumar Murmu during investigation has stated in his statement u/s. 161 Cr.P.C that the witness has further stated

that wife of Binod Hansda had illicit relation with Behari Murmu and when Binod Hansda came to know about the relation he killed Behari Murmu.

[The statement of Manik Hansda who was examined as PW-3 has been referred to the witness]

It is fact that witness Manik Hansda during investigation has stated in his statement u/s. 161 Cr.P.C that Behari Murmu was an illicit relation with wife of Binod Hansda.

It is fact that witness Manik Hansda during investigation has stated in his statement u/s. 161 Cr.P.C that he heard the cries in the night in the house of Binod Hansda.

[The statement of Thandamoni Hansda who was examined as PW-5 has been referred to the witness]

It is fact that witness Thandamoni Hansda during investigation has stated in her statement u/s. 161 Cr.P.C that she used to run small liquor business shop and Behari Murmu used to visit her house to drink liquor.

It is fact that witness Thandamoni Hansda during investigation has stated in her statement u/s. 161 Cr.P.C that relation grew up in between her and Behari Murmu which she is unable to disclose.

It is fact that witness Thandamoni Hansda during investigation has stated in her statement u/s. 161 Cr.P.C that her husband came to know about the said relation and on 09/11/2013 in the evening when Binod was in house she asked Behari to go away from her house and then he went but he again came back at 08PM and told that he is going for fishing.

It is fact that witness Thandamoni Hansda during investigation has stated in her statement u/s. 161 Cr.P.C that her husband before leaving the house took an axe in the mid night and thereafter he returned alone and when she asked him about Behari Murmu, Binod Hansda did nor reply and went to sleep.

It is fact that witness Thandamoni Hansda during investigation has stated in her statement u/s. 161 Cr.P.C that on 11/11/2013 the dead body of Behari Murmu was found in the paddy field of Gurucharan Hansda.

During police custody Binod Hansda has made a statement regarding recovery u/s 27 of the Indian Evidence Act that he will show the axe if he will be taken at his home. Let the portion of the statement be marked as **Exbt. P-11/PW-10**.

Cross-examination:-

Not a fact that Thandamoni Hansda, Manik Hansda and Sunil Kumar Murmu disclosed to me about the incident during the investigation.

[**Exbt. P-8/PW-10** is shown to the witness]

There is no GD entry in the body of this document.

It is fact that there is no description of axe and place from where it will be recovered.

[**Exbt. P-11/PW-10** is shown to the witness]

It is fact that in this statement it is only written that if he will be taken to home and village he will help in recovery of the offending weapon.

There is no other statement except this statement. No statement was recorded post-recovery of the offending vehicle.”

23) The evidence of S.I. Hari Sikdar (PW-11) reads thus as it appears from the deposition sheet:-

“Presently, I am posted as Sub-Inspector of Police at Barasat P.S. On 08/12/2014 I was posted as Sub-Inspector of Police at Jhargram police station. On that very day I was entrusted with the charge of further investigation of Jhargram PS Case No. 278/13 dated 11/11/2013 by the I/C, Jhargram. I took step to collect the FSL report in this case but I could not receive the same till today.

Then on the basis of memo of evidence and in consultation with teh superiors I submitted charge-sheet in this case vide Jhargram PS charge-sheet No. 22/15 dated 31/01/2015 u/s. 302/201 IPC against accused Binod Hansda.

Cross-examination:-

At the time of submission of charge-sheet FSL report was not received and thereafter too.

Not a fact that I have submitted charge-sheet perfunctorily.”

ARGUMENT AT THE BAR

24) Ld. Public Prosecutor-in-charge Shri Prabir Pal by advancing his argument by stating inter alia that in this case though some of the prosecution witnesses have been declared hostile but when their statements were referred to the I.O then the same was proved by the I.O and became the substantive evidence. He has further argued that in this case the motive to commit offence has been duly proved by the prosecution and the offending weapon was also recovered during investigation showing complete chain of circumstances. So, on this counts he has submitted that the prosecution has been able to prove its case beyond doubt.

25) On the other hand, Ld. Lawyer for the defence Shri Nabendu Ghosal has stated inter alia that the FIR has not been exhibited in this case as per law and the witnesses have narrated everything on the basis of hearsay evidence. He has also submitted that the motive to commit crime has not been proved in this case and the seizure list dated 11/11/2013 was prepared at Jhargram P.S. There was no eyewitness to the incident and the prosecution has failed to prove the case through circumstantial evidence. He has also submitted that that no document has been proved in this case of the unnatural death case and seizure lists were not proved by the witnesses. He has also questioned the recovery of the offending weapon in this case u/s. 27 of the Indian Evidence Act and also submitted that there is no evidence of last seen together in this case. He has further argued that no missing diary was lodged in this case regarding the missing of Behari Murmu. He has also submitted that PO in this case has not been ascertained properly and the prosecution case failed for non-examination of material witnesses. He also relied upon the judgments filed as per lists and lastly he has submitted that the prosecution has been failed to prove its case beyond all reasonable doubt.

**LAW RELATING TO APPRECIATION OF EVIDENCE OF
HOSTILE WITNESSES AND ITS EVIDENTIARY VALUE**

26) It is the settled position of law that in cases, even if witnesses go hostile and are cross-examined by the Public Prosecutor, then it is the Court to consider in each case whether on account of such cross-examination and contradictions, the credibility of the witness stands shattered or if his testimony or part of it can still be believed. If on cross-examination of the witness, it has lost the confidence of the Court and his credit has not been completely shaken and if his testimony when read as a whole with care and caution and corroborated by other witnesses on those material points satisfies the conscience of the Court to act upon his testimony then embargo can be placed to disbelieve such witness merely on account of the fact that he has been declared hostile. (Mohinder Singh Vs. State of Punjab, 2007 CrL. L.J 2478, 2485 (para-40) (P & H).

27) The Court should always be slow in acting on the evidence of a hostile witness. It should require corroboration by other reliable evidence, but the evidence may not be rejected outright because he makes different statements at different times. (Karuppana Thevar Vs. State of Tamilnadu AIR 1976 S.C 980 and State of Rajasthan Vs. Bhawani AIR 2003 S.C 4230).

28) The probative value of the evidence of a hostile witness depends on the quality and confidence it generates in the mind of the Court after being subjected to close scrutiny. If the testimony of such a witness placed in juxtaposition to the other evidence on record does not appear to be consistent and acceptable the same cannot be relied upon. It is only after assessing the intrinsic worth of his testimony with utmost care and caution that either the prosecution or the defence may rely on any part thereof which is consistent with its case. Evidence of such a witness need not be completely rejected only because he has turned hostile. The Court, however, must be circumspect in accepting his testimony and, to the extent

possible, look for its corroboration. (Gudu Ram Vs. State of H.P 2013 CrI.J, 481 para 23. S.C).

29) It has further been held by the Hon'ble apex Court that it is quite strange that some witnesses do turn hostile but that by itself could not prevent the Court from finding an accused guilty if there is otherwise acceptable evidence in support of the prosecution. (Sheikh Jakir VS state of Bihar AIR 1983 S.C 911 and state of Gujarat VS. Balu Bhai Madhabhai Zala 1995 CrI.J 2588).

30) When a witness declared hostile then his testimony not shaken on material point in cross-examination, there is no ground to reject his testimony in to to (Syed Akbar Vs. State of Karnataka AIR 1979 SC 1844).

31) The Court is not precluded from taking into account the statement of a hostile witness altogether and it is not necessary to discard that same in to to and can be relied upon partly (Gulsan Kumar Vs. State) 1993 CrI.J. 1525) (Del).

32) Any portion of testimony of witness declared hostile by the party calling is acceptable to the Court provided it has got relevancy in the matter. Under the law of evidence, there is no unacceptability of the testimony of the witness who merely turns hostile. The Court has to see whether the testimony of a particular witness is believable and acceptable or not. (Gopal Ghosh Vs. State of West Bengal 2010 CrI.L.J 485 (Cal).

33) Merely because a witness becomes hostile it would not result in throwing out the prosecution case, but the Court must see the relative effect of its testimony and when prosecution obtains permission to cross-examine the witness by treating him as a hostile it would not efface the value of the evidence of hostile witness and if such evidence is corroborated by other evidence there is no legal to convict the accused on the basis of that evidence of the hostile witness. And accordingly testimony of a hostile witness is acceptable to the extent, it is corroborated by that of a reliable witness. It is also settled law that evidence of a hostile witness is not

necessarily to be rejected either in whole or in part. It is also not to be rejected so far as it is in favour of the party who called the witness, nor it is to be rejected so far as it is in favour of the opposite party. The whole of the evidence so far as it affects both parties favourably and unfavourably must be considered for whatever it is worth. (Suresh Chand Vs state of Hariyana 1976 CrLJ 452, Bhagwan Singh Vs. state of Hariyana AIR 1976 S.C 202. State of Maharashtra vs. Harish Chandra Tukaram Awatade 1997 CrLJ 612 Bombay, Rima Nayak Vs. State AIR 1965 Ori 31, Mahender Singh Vs. State of Punjab 2007 CrLJ 2478 (P & H).

34) When a witness is cross-examined and contradicted with the leave of the Court by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the judge finds that in the process the credit of witness has not been completely shaken, he may after reading and considering the evidence of the said witness, except it in the light of other evidence on record that part of his testimony which he found to be credit worthy and act upon it. (T. Shankar Prasad Vs. Andhrapradesh 2004 (3) SCC 753).

35) Further Hon'ble Apex Court in Arun Vs. State of Chhattisgarh (2017) (2) SCC (Cri 53: 2017 3 SCC 247) that merely because the witnesses have turned hostile in part their evidence cannot be rejected in toto. The evidence of such witnesses cannot be treated as effaced all together but the same can be accepted to the extent that their version is found to be dependable and the Court shall examine more cautiously to find out as to what extent he has supported the case of the prosecution.

36) The fact that the witness was declared hostile at the instance of the Public Prosecutor and he was allowed to cross-examine the witness, furnishes no justification for rejecting en bloc the evidence of the witness.

However, the Court has to be very careful, as prima facie, a witness who makes different statements at different times, has no regard for the truth. His evidence has to be read and considered as a whole with a view to find out whether any weight should be attached with. The Court should be slow to act on testimony of such a witness; normally, it should look for corroboration to his testimony (Paramjeet Singh Vs. State of Uttrakhand (2010) 10 SCC 439).

37) Section-161 of Cr.P.C. titled examination of witness by police “provided for oral examination of a person by any investigating officer when such person is supposed to be acquainted with the facts and circumstances of the case. The purpose for and the manner in which the police statement recorded U/s- 161 Cr.P.C can be used at any trial are indicated in Section-162 Cr.P.C. Section-162 Cr.P.C reads as under :-

38) “Section-162 Cr.P.C statement to police not to be signed ; Use of statements in evidence.- 1) No statement made by any person to a police officer in the course of an investigation under this chapter, shall, if reduced to writing, be signed by the person making it ; nor shall in such statement or any record thereof, whether in a police diary or otherwise or any part of such statement or record, be used for any purpose, save as therein after provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made;

39) Provided that when any witness is called for by the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the court, by the prosecution, to contradict such witness in the manner provided by section-145 of the Indian Evidence Act, 1872; and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

40) Nothing in this section shall be deemed to apply to any statement falling within the provision of clause-1 of section-32 of the Indian Evidence Act, 1872 or to effect the provisions of section-27 of the Act.

Explanation :- An omission to state a fact or circumstance in the statement referred to in Sub-section-1 may amount to contradiction if the same appears to significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be question of fact.

41) Section 162 Cr.P.C bars use of the statement of witnesses recorded by the police except for the limited purpose of contradiction of such witnesses as indicated there. The statement made by witnesses before the police U/s-161 Cr.P.C can be used only for the purpose of contradicting such witness on what he has stated at the trial as laid down in the proviso to Section 162(1) Cr.P.C. the statement U/s- 161 Cr.P.C recorded during the investigation are not substantive piece of evidence but can be used primarily for the limited purpose : 1. of contradicting such witness by an accused U/s- 145 of the Evidence Act; 2. the contradiction of such witness also by the prosecution with the leave of the court; and 3. the re-examination of the witnesses.

42) The court can not sou motu make use of the statements to police not proved and asked question with reference to them which are inconsistent with the testimony of witness in the court. The Word in Section 162 of Cr.P.C. “ if duly proved” clearly show that the record of the statement of witness can not be admitted in evidence straightway nor can be looked into but they must be duly proved for the purpose of contradiction of eliciting admission from the witness during cross-examination and also during the cross-examination of the investigating officer. The statement before the investigating officer can be used for contradiction but only after strict compliance with Section 145 of the Evidence Act I.e by drawing attention go the parts indicated for

contradiction.

43) Section 145 of the Evidence act reads as under :- “145. cross-examination as to previous statement in writing – the witness may be cross-examination as to previous statement made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but , if it is intended to contradict him by the writing his attention must , before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him”.

44) Under Section -145 of the Evidence act where it is intended to contradict the witness by his previous statement reduced into writing , the attention of such witness must be called to prove those parts of it which are to be used for the purpose of the contradicting him, before the writing can be used . While recording the deposition of the witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to be noticed of the witness in his cross- examination. The attention of the witness is drawn to that part and this must reflect in his cross examination by reproducing it. If the witness admits the part intended to contradict him, it is stand proved and there is no need to further proved of contradiction and it will be read while appreciating the evidence. If he denies having made that part of the statement, his intention must be drawn to that statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, but it is yet to be proved. Thereafter when investigating officer is examined in the court, his attention should be drawn to the passage marked for the purpose of contradiction, it will then be proved in the deposition of the investigating officer who again by referring to the police statement will depose about the witness having made that statement. The process again involves referring to the police statement and calling out that part with which the maker of the statement was intended to be contradicted. If the witness was not confronted with that part of statement

with which the defence wanted to contradict him, then court can not suomoto make use of the statement to police not proved in compliance with Section 145 of the Evidence Act that is, by drawing attention to the parts intended for contradiction. [(2015) 9 Supreme Court cases 588].

45) The Hon'ble Supreme Court delineated the scope of Section 162 Cr.PC in **in Tahsildar Sing and another -Versus- State of UP** and held that:

“This leads us to the main question in the case, I.e, the interpretation of s. 162 of the Code of Criminal Procedure. The cardinal rule of construction of the, provisions of a Section with a proviso is succinctly stated in Maxwell's Interpretation of Statutes, 10 Edn., at p.162 thus:

“The proper course is to apply the broad general rule of construction, which is that a section or enactment must be construed as a whole, each portion throwing light if need be on the rest. The true principle undoubtedly is, that the sound interpretation and meaning of the statute, on a view of the enacting clause, saving clause, and proviso, taken and construed together is to prevail.”

46) Unless the words are clear, the Court should not so construe the proviso as to attribute an intention to the legislature to give with one hand and take away with another. To put it in other words, a sincere attempt should be made to reconcile the enacting clause and the proviso and to avoid repugnancy between the two.

47) At the same time, it being the earliest record of the statement of a witness soon after the incident, any contradiction found therein would be of immense help to an accused to discredit the testimony of a witness making the statement. The section was, therefore, conceived in an attempt to find a happy via media, namely, while it enacts an absolute bar against the statement made before a police officer being used for any purpose whatsoever, it enables the accused to rely upon it for a limited purpose of contradicting a witness in the manner provided by s. 145 of

the Evidence Act by drawing his attention to parts of the statement intended for contradiction. It cannot be used for corroboration of a prosecution or a defence witness or even a Court witness. Nor can it be used for contradicting a defence or a Court witness. Shortly stated, there is a general bar against its use subject to a limited exception in the interest of the accused, and the exception cannot obviously be used to cross the bar.”

48) In **Muthu Naicker v. State of Tamil Nadu AIR 1978 SC 1647**, the Supreme Court emphasized the importance of Section 161, and held that the prosecution’s obligation to prove the facts mentioned by witness was not discharged merely by pointing to their omission to depose parts of those statements, by contradicting such omitted, or material portions. In other words, if a witness does not support the prosecution case, it is not enough that contradictions are pointed out by the prosecution in its cross examination (of its witness, by permission of court); other evidence to prove those facts – other than the statement, has to be led. The Court observed, in this context that:

49) “One curious practice not known to law adopted by him was that whenever a witness was asked about an omission with reference to the statement of the witness recorded by the investigating officer under **Section 161, Cr.PC**, the Learned Public Prosecutor would make a statement whether the statement referred to in evidence was to be found or was not to be found in the statement under **Section 161, Cr.PC** and no attempt was made to prove the omission. Such concession for proof of contradiction or omission lacks support of law and is likely to be unfair to the witness in that when the investigating officer is questioned with regard to the contradiction or omission, a further opportunity will be available to him to explain the contradiction or omission.”

50) Similarly, in regard to the limits to which Section 161 statements can be relied on when the witness deposes contrary to such statements

during investigation, the Supreme Court had this to say, in **Ram Swaroop v. State of Rajasthan** 2004 Cri. L.J 5043:

“We have also noticed that the High Court has attached undue importance to the statements made in the course of investigation and recorded under **Section 161 of the Code of Criminal Procedure**. It is well settled that a statement recorded under **Section 161 of the Code of Criminal Procedure** cannot be treated as evidence in the criminal trial but may be used for the limited purpose of impeaching the credibility of a witness.

51) **Braund J., in Emperor -Versus- Aftab Mohd. Khan, AIR 1940 Allahabad 291**, gave the purpose of section 162 at page 299 “As it seems to us it is to protect to accused persons from being prejudiced by statements made to police officers who by reason of fact that an investigation is known to be on foot at the time the statement was made, may be in a position to influence the maker of it and, on the other hand, to protect accused persons from the prejudiced at the hands of persons who in the knowledge that an investigation has already started, are prepared to tell untruths.”

52) A Division Bench of Hon’ble Nagpur High Court in **Baliram Tikaram -Versus- Emperor, AIR 1945 Nagpur-I** expressed a similar idea in regard to the object underlying the section, at page 5 thus:-

“The object of section is to protect the accused both against over-zealous police officers and untruthful witnesses.”

53) Section 162 with its proviso, if construed in the manner which we will indicate at the later stage of judgment, clearly achieves the said object.

54) Section 145 of the Evidence Act empowers the accused to put all relevant questions to a witness before his attention is called to those parts of the writing with a view to contradict him and Hon’ble Court in **Bhagwan Singh -Versus- State of Punjab 1952 SCR 812** describes the

procedure to be followed to contradict a witness u/s. 145 of the Evidence Act at page No. 819:-

55) "Resort to section 145 would only be necessary if the witness denies that he made the former statement. In that event, it would be necessary to prove that he did, and if the former statement was reduced to writing, then section 145 requires that his attention must be drawn to these parts which are to be used for contradictions. But the position does not arise when the witness admits the former statement. Section 145 of the Evidence Act is in two parts:-

56) First part enables the accused to cross-examine a witness as to previous statement made by him in writing or reduced to writing without such writing being shown to him;

57) Second part deals with a situation where the cross-examination assumes the shape of contradictions. The procedure prescribed is that , if it is intended to contradict a witness by the writing, his attention must, before the writing can be proved be called to those parts of it which are to be used for the purpose of contradicting him. The proviso to 162 of Cr.P.C only enables the accused to made use of such statements to contradict a witness in the manner provided by section 145 of the Evidence Act. If he admits his previous statement, no further proof is necessary; if he does not admit, the practice generally followed is to admit it subject to proof by the police officer.

58) From the foregoing discussion, Hon'ble Court has held that the following propositions emerged:-

- 1) A statement in writing made by a witness before a police officer during the course of investigation can be used only to contradict his statement in the witness box and for no other purpose.
- 2) The statements not reduced to writing by the police officer cannot be used for contradictions.

3) Though a particular statement is not expressly recorded, a statement that can be deemed to be part of that expressly recorded can be used for contradictions.

59) What section 145 of the Evidence Act provides is that a witness may be contradicted by a statement reduced into writing and that is also the use to which earlier statement can be put u/s. 162 of the Code of Criminal Procedure. When some omissions occurred, there is contradictions in one sense but not necessarily on a relevant matter. The statements of witness may and do comprise numerous facts and circumstances, and it happens that when they are asked to narrate their version over again they omit some and add others. What use can be made of such omission or addition is for the accused to decide, but it cannot be doubted that some of the omissions or additions may have a vital bearing upon the truth of the story given. The use of word re-examination and cross-examination in some proviso shows that the cross-examination is contemplated or in other words, that the manner of contradictions u/s. 145 of the Evidence Act comprises both cross-examination and contradiction.

60) **Hon'ble Apex Court of India in Attar Singh - Versus- State of Maharashtra** has been pleased to held:-

“We have meticulously considered the arguments advanced on this vital aspect of the matter on which the conviction and sentenced imposed on the appellants is based. This compels us to consider as to whether the conviction and sentence recorded on the basis of testimony of witness who has been declared hostile could be relied upon for recording conviction of the accused -appellant. **But it was difficult to overlook the relevance and value of evidence of even a hostile witness while considering as to what extent their evidence could be allowed to be relied upon and used by the prosecution. It could not be ignored that when a witness is declared hostile and when his testimony is not shaken on material points in the cross-examination, there is ground to reject his testimony in toto as it is**

well settled by a catena of decision that the court is not precluded from taking into account the statement of a hostile witness altogether and it is not necessary to discard the same in toto and can be relied upon partly. If some portions of the statement of the hostile witness inspires confidence, it can be relied upon. He cannot be thrown out as wholly unreliable. This was the view expressed by Hon'ble Apex Court in the case of Syed Akbar -Versus- State of Karnataka reported in AIR 1979 Supreme Court 1848, whereby the Ld. Judges of the Hon'ble Supreme Court reversed the judgment of Hon'ble Karnataka High Court which had discarded the evidence of hostile witness in its entirety. Similarly, in Gulsan Kumar -Versus- State 1993 CRLJ 1525 and in Kunwar -Versus- State of UP 1993 CRLJ 3421 and also Haneefa -Versus- State 1993 CRLJ 2125 have held that it is not necessary to discard the evidence of hostile witness in toto and that can be relied upon partly. Thus merely because a witness becomes hostile it would not result in throwing out the prosecution case, but the Court must see the relative effect of his testimony. If the evidence of hostile witness is corroborated by other evidence, there is no legal bar to convict the accused. Thus the testimony of a hostile witness is acceptable to the extent it is corroborated by that of a reliable witness/evidence. It is, therefore, open to the Court to consider the evidence and there is no objection to a part of that evidence being made use of in support of the prosecution or in support of the accused.

61) Hon'ble Apex Court of India Anees -Versus-The State Government of NCT in Criminal Appeal No. 437 of 2015, D/d 03.05.2024, as reported in 2024 AIR Supreme Court 2297, His Lordships Hon'ble Justice J. B. Pardiwala for the Hon'ble Bench of the Hon'ble Apex Court have been pleased to held that

“Under section 145 of the Evidence Act when it is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the

purpose of contradicting him, before the writing can be used while recording the deposition of witness. The attention of witness is drawn to that part and this must reflect in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved and there is no need for further proof of contradiction and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, but it is yet to be proved. Thereafter, when the Investigating Officer is examined in the Court, his attention should be drawn to the passage marked for the purpose of contradictions, if will then be proved in the deposition of Investigating Officer who, again, by referring to the police statement will depose about the witness having made that statement. The process again involves referring to the police statement and calling out that part with which the maker of statement was intended to be contradicted. If the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the court cannot suo-moto make use of the statement to police not proved in compliance with Section 145 of the Evidence Act, that is, by drawing attention to the parts intended for contradictions (**V.K. Mishra -Versus- State of Uttrakhand: 2015(9) SCC 588**).”

62) So, in view of the laws as laid by Hon’ble Courts as discussed above this Court has to appreciate the evidence of prosecution witnesses who has been declared hostile in this case. **It appears from the evidence that in this case prosecution witnesses Sunil Kumar Murmu (PW-2), Manik Hansda (PW-3), and Thandamoni Hansda (PW-5) were declared hostile, who when examined did not support the prosecution case and were declared hostile except other witnesses.** The above named prosecution witnesses resoled from their previous statements made to the Investigating Officer (I.O.) during investigation and they did not support the prosecution case. But on scrutiny of evidence of Investigating Officer

Chandi Charan Bera (PW-10), that in his evidence he proved the statements made by the witnesses, when the statement of witnesses were referred to the I.O during his examination and he gave answers to them, that can safely be read into evidence being proved in view of the law laid down by the Hon'ble Apex Court as discussed above and particularly in the judgment of **Hon'ble Apex Court of India in Anees Versus State Government of NCT, V.K. Mishra Versus State of Uttrakhand and in Tahsildar Sing Versus State of UP.**

Accordingly, the evidence of I.O on contradiction can safely be relied in this case after applying the principles of the law as laid down by Hon'ble Apex Court of India in Anees Versus State Government of NCT, V.K. Mishra Versus State of Uttrakhand and in Tahsildar Sing Versus State of UP.

63) In view of the direction of Hon'ble Apex Court of India regarding appreciation of evidence of hostile witnesses as discussed above and particularly in the judgment Anees Vs. State Government of NCT as reported in Criminal Appeal No. 437 of 2015 as well as in the judgment of V.K. Mishra Vs. State of Uttrakhand:2015(9)SCC588, this Court also draw the attention of witnesses, who have been declared hostile, to the previous statements of the witnesses reduced into writing, and the attention of such witness was called on those parts of it which are used for the purpose of contradicting him. The said fact has been reflected in the deposition sheet, and in this case the witnesses have denied having made that part of statement during the investigation regarding the commission of crime by the accused persons etc. And by following that process this Court brought the contradiction on the record which was yet to be proved. Thereafter, when the Investigating Officer Chandi Charan Bera was examined before this Court as PW-10, his attention was drawn to the passages marked for the purpose of contradictions, and it was then proved by Investigating Officer (I/O) who during his deposition, by referring to the police statement deposited before the Court that the witness having made

those statements. And in view of the above process, after complying the provisions of Section 145 of the Evidence Act, the substantive evidence have been brought on record which can be used in this case in order to decide the charges on merit.

64) What would construe material discrepancies in the testimony of witness stands explained by Hon'ble Apex Court to be discrepancies which are "not normal, and not expected of a normal person". [Reference: **State of Rajasthan v. Smt. Kalki, (1981) 2 SCC 752.**]

65) Hon'ble Apex Court has further placed reliance on the judgment of this Court in **Joseph s/o Kooveli Poulo (supra)**, wherein it was held that it is not that every discrepancy or contradiction matters much in the matter of assessing the reliability and credibility of a witness or the truthfulness of his version. Unless the discrepancy and contradictions are so material and substantial and that too are in respect of vitally relevant aspects of the facts deposed, the witness cannot be straightway condemned and their evidence discarded in its entirety.

66) In this case it appears that three prosecution witnesses did not support the prosecution case and accordingly they were declared hostile, and the prosecution was permitted to cross-examine its own witness. Thereafter, the I.O was contradicted with regard to the previous statements of the witness and substantive evidence have come forward before the court and which was duly corroborated by the medical as well as circumstantial evidence showing and proving involvement of the accused in commission of the offence for which he was charged. So, this court, does not find any impediment, in view of the law laid down by the Hon'ble Court as discussed above to place its reliance upon the evidence of the hostile witness which was duly corroborated by medical, circumstantial and discovery of fact evidence.

EXAMINATION OF ACCUSED PERSONS UNDER SECTION 313

Cr.P.C. AND ANSWERES GIVEN THEREOF:-

67) **Hon'ble Apex Court of India in Joseph son of Koovelipouyellou v. State of Kerala, (2005 SCC 197** has been pleased to observe that during the time of questioning under Section 313 CrPC., the appellant instead of making at least an attempt to explain or clearly the incriminating circumstances in-culpating him, and connecting him with the crime by his adamant attitude of total denial of everything when those circumstances were brought to his notice by the Court not only lost the opportunity but stood self-condemned. Such incriminating links of facts could, if at all, have been duly explained by the appellant, and by nobody else, they being personally and exclusively within his knowledge. In fact, Courts have, from the falsity of the defence plea and false answers given to Court, when questioned, found the missing links to be supplied by such answers for completing the chain of incriminating circumstances necessary to connect the person concerned with the crime committed. [State of Maharashtra v. Suresh., (2000) 1 SCC 471].

68) Further Hon'ble Apex Court of India in Musheer Khan v. State of M.P., (2010) 2 SCC 748 has been pleased to held that it is obligatory on the part of the accu68) **Hon'ble Apex Court of India in Joseph son of Koovelipouyellou v. State of Kerala, (2005 SCC 197** has been pleased to observe that during the time of questioning under Section 313 CrPC., the appellant instead of making at least an attempt to explain or clearly the incriminating circumstances in-culpating him, and connecting him with the crime by his adamant attitude of total denial of everything when those circumstances were brought to his notice by the Court not only lost the opportunity but stood self-condemned. Such incriminating links of facts could, if at all, have been duly explained by the appellant, and by nobody else, they being personally and exclusively within his knowledge. In fact, Courts have, from the falsity of the defence plea and false answers given to Court, when questioned, found the missing links to be supplied by such answers for completing the chain of incriminating circumstances necessary to connect the person concerned with the crime committed. [State

of Maharashtra v. Suresh., (2000) 1 SCC 471].

69) Further Hon'ble Apex Court of India in Musheer Khan v. State of M.P., (2010) 2 SCC 748 has been pleased to held that it is obligatory on the part of the accused while being examined under Section 313 CrPc., to furnish some explanation with respect to incriminating circumstances associated with him, and the Court must take note of such explanation even in a case of circumstantial evidence, to decide whether or not the chain of circumstances is complete. [Phula Singh v. State of Himachal Pradesh, (2014) 4 SCC 9.]

70) In our case in hand it appears to the Court that during examination of accused under Section 313 CrPC., he has only replied to the questions an incriminating materials against them by only saying that he is "innocent" and not connected with this crime in any shape, manner and design. So from the examination of accused under Section 313 CrPC., it appears to the Court from the answers given by the accused, when incriminating circumstances were put to him, and it has been noticed by the Court he lost the opportunity to answer explaining the circumstances and from these missing links becomes complete with respect to the chain of incriminating circumstances necessary to connect the persons concerned with the crime committed by them in this case.

PLACE OF OCCURRENCE:-

71) From the evidence of de-facto complainant it appears before the Court that his son Behari Murmu was called by Binod Hansda from his home for work at his paddy field and thereafter in the evening again he was called and taken by Binod Hansda but thereafter Behari Murmu did not return home. Binod Hansda told his son that they will go to catch fish to have feast in the night and thereafter the body of Behari Murmu was found at the paddy field of Gurucharan Hansda. Further, this evidence was corroborated by the complaint which has been marked in this case.

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72) Further from the inquest report it appears that the body of Behari Murmu was found at a remote place which has been treated in this case as place of occurrence and as per sketch map appears to be a paddy field. So, the place of occurrence has been correctly fixed in this case.

73) So, from the materials available on record, the Court gives little credence to such submissions of the defence, being baseless, that sketch map, inquest report, FIR, written complaint duly corroborates the evidence of Investigating Officer on contradictions, that place of occurrence in this case had been disclosed at the earliest point of time. Thus, the place of occurrence has been proved beyond doubt in this case.

RECOVERY UNDER SECTION 27 OF THE INDIAN EVIDENCE

ACT:-

74) It appears from the evidence of the I/O Chandi Charan Bera who has been examined in this case as PW-10 that in his statement he has stated that when Binod Hansda was taken into police custody by the order of Court, his statement was recorded and on the basis of his disclosure statement he was taken to his house/place and on his identification the offending axe was seized by I/O on proper seizure list and the portion of said leading statement during police custody which relates distinctly to the fact discovered has been marked as Exbt. P-8/PW-10 in this case. It has further been stated by the I/O that the said 'axe' was seized by him on proper seizure list dated 15/11/2013, it has been marked as Exbt. P-2/1/PW-10 in this case along with signature of accused Binod Hansda.

75) It appears from the perusal of the portion of statement which has been marked as Exbt. P-11/PW-10, which was recorded when Binod Hansda was taken on police remand, and from that it appears that Binod Hansda during police custody has made this statement that if he will be taken to his house at Aandharisole then he will show and

handover the 'axe' by which he committed murder of Behari Murmu.

Section 27 of the Evidence Act provides that where the recoveries made were attested by police officer and independent witnesses and only police officers were examined and independent witnesses were not examined, it cannot be said that the discovery is illegal. Reference in this regard may be made to **Dalbir Kaur v. State of Punjab, AIR 1977 SC 472. Similarly, it was held by Hon'ble Supreme Court in State of Maharashtra v. Baharat Fakira Dhiwar, AIR 2002 SC 16 that when** articles stained with blood of deceased were recovered at the instance of accused and supported by other circumstances, such evidence cannot be brushed aside. The law has further been explained by Hon'ble Supreme Court in *Ganesh Lal v. State of Rajasthan*, 2001 AIR SCW 5251 to the effect that if the seized articles were not shown to be tampered with no imputation thrown any piece of incriminating evidence which was not otherwise available on the seized articles, the seizure cannot be doubted.

In *Probal Dutta v. State of Assam*, 2013 AIR SCW 3517, it was held that if any statement is made by accused leading to discovery of fact, such disclosure statement is admissible in evidence. Mere bald denial of recovery without any explanation by the accused is not sufficient to discard the discovery statement made under section 27 of the Evidence Act.

76) Hon'ble Apex Court of India in *Amit Singh Bhikam Singh Thakur v. State of Maharashtra*; (2007) 2 SCC 310 has been pleased to discuss the law relating to Section 27 of the Indian Evidence Act regarding discovery of fact in consequence of information received from accused. Hon'ble Court has been pleased to hold that so far as the discovery under Section 27 of the Indian Evidence Act is concerned it appears to be from open space as has been observed in its judgment **Anter Singh v. State of Rajasthan.**

77) The scope and ambit of Section 27 of the Evidence

Act were illuminatingly stated in **Pulukuri Kotayya v. King Emperor** in the following words, which have become locus classicus:

“[I]t is fallacious to treat the fact discovered within the Section as equivalent to object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that ‘I will produce a knife concealed in the roof of my house’ does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant.

78. The aforesaid position was again highlighted in **Prabhoo v. State of U.P.**;

“11. Although the interpretation and scope of Section 27 has been the subject of several authoritative pronouncements, its application to concrete cases is not always free from difficulty. It will therefore be worthwhile at the outset, to have a short and swift glance at Section 27 and be reminded of its requirements. The section says:

‘27. Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not as relates distinctly to the fact thereby discovered, may be proved.’

79. The expression “fact discovered” in this section is restricted to a physical or material fact which can be perceived by the senses, and that it does not include a mental fact, now it is fairly settled that the expression “fact discovered” includes not only the physical object produced, but also

the place from which it is produced and knowledge of the accused as to this. It is one link in the chain of proof and the other links must be forged in the manner allowed by the law, and the similar effect was the views expressed in **K. Chinnaswamy Reddy v. State of A.P.**

80. Hon'ble Apex Court in **Randeep Singh @ Rana and another - Versus- State of Haryana** has laid down the law relating to circumstantial evidence and law relating to discovery on the disclosure statement. Hon'ble Court has held that Section 27 of the Indian Evidence Act provides that "when any fact is deposed to as discovered in consequence of information received from a person accused of an offence, in custody of police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved." Hon'ble Court has further held that section 27 allows that part of the statement made by the accused to the police "whether it amounts to a confession or not" which relates to the fact thereby discovered, to be proved. Thus even a confessional statement before police which distinctly relates to the discovery of a fact may be proved u/s. 27. It was further pointed out that "the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact".

81. **Hon'ble Apex Court of India in Anees -Versus- State Government of Delhi 2024 AIR Supreme Court 2297** arising out of Criminal Appeal No. 437 of 2015 has held that:-

"In Madan Singh -Versus- State of Rajasthan 1979 SCC (Cri) 56 it was observed that where the evidence of Investigating Officer who discovered the material object is convincing, the evidence has to discovery need not be rejected on the ground that the punch witnesses did not support the prosecution version. Similar view was expressed in Mohd. Aslam -Versus- State of Maharashtra, (2001) 9 SCC 362.

In Anter Singh -Versus- State of Rajasthan (2004) 10 SCC 657, it was

held by the Hon'ble Apex Court "10.... even if punch witnesses turn hostile which happens very often in criminal cases, the evidence of the person who effected the recovery would not stand vitiated."

82. The evidence of discovery would be admissible as conduct u/s. 8 of the Evidence Act quite apart from the admissibility of the disclosure statement u/s. 27 of the Evidence Act as Hon'ble Apex Court observed in *A.N. Venkatesh and another -Versus- State of Karnataka (2005) 7 SCC 714:-*

"9. By virtue of section 8 of the Evidence Act, the conduct of accused person is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where the dead body of kidnapped boy was found and on there pointing out the body was exhumed, would be admissible as conduct u/s. 8, irrespective of the fact whether the statement made by accused contemporaneously with or antecedent to such conduct falls within the purview of section 27 or not as held by this Court in **Prakash Chand -Versus- State (Delhi Administration) [1979 3 SCC 90: 1979 SCC (Cri) 656: AIR 1979 SC 400]**. Even if we hold that the disclosure statement made by the accused-appellants is not admissible u/s. 27 of the Evidence Act, still it is relevant u/s. 8.

83. In the **State (NCT of Delhi) -Versus- Navjot Sandhu @ Afsan Guru (2005 11 SCC 600**, the two provisions I.e. section 8 and section 27 of the Evidence Act were elucidated in detail with reference to the case law on the subject and apropos to section 8 of the Evidence Act, wherein it was held:

"205. before proceeding further, we may avert to section 8 of the Evidence Act. Section 8 in so far as it is relevant for our purpose makes the conduct of an accused person relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. It could be either a previous

or subsequent conduct. And there are two explanations to the section which explains the ambit of word 'conduct'.

84. Hon'ble Apex Court has further held in Anees -Versus- State Government of NCT (Supra)

"206. We have already noticed the distinction highlighted in Prakash Chand Case (Supra) between the conduct of an accused which is admissible u/s. 8 and statement made to a police officer in the course of investigation which is hit by section 162 Cr.P.C. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where stolen articles or weapons used in commission of the offence were hidden, would be admissible as 'conduct' u/s. 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct, false within the purview of section 27, as pointed out in Prakash Chand case. In **Om Prakash** case (Supra) the court held that: (SCC page 262, para 14):-

"Even apart from the admissibility of the information u/s. 27, the evidence of Investigating Officer and the Panchas that the accused had taken them to PW-11 (From whom he purchased the weapon) and pointed him out and as corroborated by PW-11 himself would be admissible u/s. 8 of the Evidence Act as conduct of the accused".

Hon'ble Court has in view of the above discussion, has been pleased to held that there must be a note of caution that like any other piece of evidence, the conduct of accused is also one of the circumstance which the court may take into consideration along with the other evidence on record, direct or indirect.

85. Now, in this case it has been proved before the court that on the basis of discovery statement the 'axe' was discovered and seized on identification of the accused during police custody, by which he murdered Behari Murmu, and the same has been proved before the Court without any doubt in the mind of Court. The Court also finds no irregularity in seizure

of the said 'axe' after compliance with the provision of Section 27 of the Indian Evidence Act.

Accordingly, from the conduct of accused and the discovery the Court has no doubt in its mind that no discovery took place as per law.

CORROBORATION FROM MEDICAL EVIDENCE

86. In this case it appears from the complaint which has been marked in this case that the de-facto complainant has reported before the Inspector-in-charge Jhargram PS in his written complaint to the effect that his son Behari Murmu aged 26 years went to the house of Binod Hansda at about 08PM in the night but thereafter he did not return and his body was found with sharp-cut injuries at a paddy field.

87. On perusal of the inquest reports, which has been marked as exhibits in this case, it appears to the Court the police officer who has conducted the inquest over the body of the deceased, has opined that during inquest he found several sharp cut injuries on the body of the deceased. Thereafter, the doctor who conducted postmortem examination has submitted in his evidence, that during postmortem he found the following injuries on the body of deceased and also expressed his opinion, by which weapon these types of injuries may have occurred. I would like to reproduce the evidence of doctor who conducted postmortem examination and proved the postmortem examination reports in this case, which reads as under:-

88. ***“On the body of Behari Murmu, I found the following injuries at the time of Post-mortem examination:***

“On examination I found the following injuries:-

1. Deep sharp-cut injury over left posterior auricular area just at the level of left ear lobule cut the injuries slightly downwards anteriorly measuring 8cm x .5cm into all the soft tissue structures cut at the area and left mastoid process partially cut superficially hemorrhage plus.
2. Deep sharp-cut injury over left side of neck starting just below left angle

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of mandibulate progressing very slight upwards and posteriorly common carotid artery cut anterior laterally thyroid cartilage cut left laterally measuring 8.5cm x .75cm hemorrhage cut.

3. Deep sharp-cut injury just .75cm below number two injuries a little posteriorly measuring 7.5 cm x .5cm and all the soft tissue fractures cut left sternomastoid cut hemorrhage plus.

4. Deep sharp-cut injury at the level of mid thyroid cartilage starting just lateral to midline progressing transversely all the soft tissues structures cut left sternomastoid cut left jugular vein cut.

In my opinion, death was caused due to shock and hemorrhage, as a result of above-mentioned injuries, anti-mortem and homicidal in nature.

The weapon used was heavy **sharp-cutting weapon.**”

MOTIVE FOR CRIME

89. Hon'ble Apex Court of India in **Atley versus State of UP as reported in 1955 AIR Supreme Court 807** has been pleased to hold that where there is a clear proof of motive for the crime, that lends additional support to the finding of the Court that the accused was guilty but the absence of clear proof of motive does not necessarily lead to the contrary conclusion.

90. It has been laid down very clearly by the Hon'ble Supreme Court in a catena of decisions that **motive**, though an important link in a case based on circumstantial evidence, cannot be the sole criterion to throw the case of prosecution only on that basis. In *State of H.P v. Jeet Singh*, AIR 1999 S.C. 1293, it was held by the Hon'ble Court that it is a sound principle to remember that every Criminal Act was done with a motive but its corollary is not that no criminal offence would have been committed if the prosecution has failed to prove the precise motive of the accused to commit it. When the prosecution succeeded in showing the possibility of some ire for the accused towards the victim, the inability to further put on record the manner in which such ire would have swelled up in the mind of the offender to such a degree as to impel him to commit the

offence cannot be construed as a fatal weakness of the prosecution. It is almost an impossibility for the prosecution to unravel the full dimension of the mental disposition of an offender towards the person whom he offended.

91. In *Nathuni Yadav v. State of Bihar*, (1998) 9 SCC 238 it was laid down by the Hon'ble Supreme Court that motive for doing a Criminal Act is generally a difficult area for prosecution. One cannot normally see into the mind of another. Motive is the immotion which impels a man to do a particular act. Such impelling cause need not necessarily be proportionally grave to do grave crimes. Many a murder has been committed without any known or prominent motive. It is quite possible that the aforesaid **impelling factor** would remain undiscoverable. Though, it is a sound proposition that every Criminal Act is done with a motive, it is unsound to suggest that no such Criminal Act can be presumed unless motive is proved. After all, motive is a psychological phenomenon. Mere fact that prosecution failed to translate that mental disposition of the accused into evidence, does not mean that no such mental condition existed in the mind of the assailant.

92. Further Hon'ble Apex Court of India in **Udaipal Singh versus State of UP as reported in 1972 AIR Supreme Court 54** has been pleased to hold that in cases where only circumstantial evidence is available at the outset one normally starts looking for the motive and the opportunity to commit the crime. If evidence shows that the accused having a strong enough motive had the opportunity of committing the crime and the established circumstances on the record considered along with the explanation, if any, of the accused, exclude the reasonable possibility of anyone else being the real culprit then the chain of evidence can be considered to be so complete as to show that within all human probability the crime must have been committed by the accused, he may in that event, safely be held guilty on the circumstantial evidence.

93. In **State of Haryana v. Sher Singh, 1989 SC 1021** it was

observed by Hon'ble Supreme Court that the prosecution is not bound to prove motive of any offence in a Criminal Case, in as much as motive is known only to perpetrator of the crime and may not be known to others. If the motive is proved by the prosecution the Court has to consider it and see whether it is adequate.

94. In **Ganesh Lal v. State of Maharashtra, (1992) 3 SCC 106**, it was explained by Hon'ble Supreme Court that in a case of circumstantial evidence also when the facts are clear it is immaterial that no motive has been proved. Men do not act wholly without motive. Failure to discover the motive of the offence does not signify the non-existence of the crime. The failure to discover motive by appropriate and clinching evidence may be a witness in the proof of prosecution case, but it is not necessarily fatal as a matter of law. Proof of motive is never an indispensable factor for conviction.

95. Further Hon'ble Apex Court of India in **Mulakh Raj versus Satish Kumar as reported in 1992 AIR Supreme Court 1175** has held that "17. the case is based on circumstantial evidence and motive being absent, the prosecution failed to establish this important link in the chain of circumstance to connect the accused. We find no force in the contention. Undoubtedly, in cases of circumstantial evidence motive bears important significance. Motive always locks up in the mind of accused and sometimes it is difficult to unlearn. People do not act wholly without motive. The failure to discover the motive of an offence does not signify its non-existence. The failure to prove motive is not fatal as a matter of law. Proof of motive is never and indispensable for conviction. When facts are clear, it is immaterial that no motive has been proved. Therefore, absence of proof of motive does not break the link in the chain of circumstances connecting the accused with the crime, nor militates against the prosecution case.

96. Further Hon'ble Apex Court of India in **Subhash Aggarwal versus State of NCT of Delhi as reported in 2025 CriLJ 3071** has been pleased to hold that, while proof of motive strengthens the prosecution case,

its absence does not necessarily lead to acquittal when the circumstantial evidence is strong and conclusive.

“20. The declaration in the cited decision and the decision relied on therein, it is to the effect that if the case is built solely upon circumstantial evidence, absence of motive will be a factor that weighs in favour of the accused. Just as a strong motive does not by itself result in a conviction, the absence of motive on that sole ground cannot result in an acquittal. When the eye witnesses are not convincing, a strong motive cannot by itself result in conviction, likewise when the circumstances are very convincing and provide an unbroken chain leading only to the conclusion of guilt of the accused and not to any other hypothesis; the total absence of motive will be of no consequence.

97. Hon’ble Apex Court in three judges bench decision, **Jan Mohammad versus State of Bihar (1953)1 SCC5** has held that “Motive is a relevant fact under the Evidence Act (Section 8). It is an important element in a chain of presumptive proof where the evidence is purely circumstantial, but it may lose importance in a case where there is direct evidence by witnesses implicating the accused. In a case such as the present where the prosecution evidence itself shows that the relations between the deceased and the appellants were cordial, the absence of an apparent motive, though not necessarily fatal to the prosecution case, may reasonably be regarded as a fact in favour of the accused. We think, therefore, that the attempt to prove a motive against any of the appellants has failed.”

98. Suresh Chandra Bahri v. State of Bihar, 1995 Supp (1) SCC 80 held that in a case based on circumstantial evidence, proof of motive would ‘supply a link in the chain of circumstances’ but all the same, absence of motive cannot be a ground to altogether reject the prosecution case. Para 21 reads as follows:

“21. At the very outset we may mention that sometimes motive plays an important role and becomes a compelling force to commit a crime and

therefore motive behind the crime is a relevant factor for which evidence may be adduced. A motive is something which prompts a person to form an opinion or intention to do certain illegal act or even a legal act but with illegal means with a view to achieve that intention. In a case where there is clear proof of motive for the commission of the crime it affords added support to the finding of the court that the accused was guilty of the offence charged with. But it has to be remembered that the absence of proof of motive does not render the evidence bearing on the guilt of the accused nonetheless untrustworthy or unreliable because most often it is only the perpetrator of the crime alone who knows as to what circumstances prompted him to a certain course of action leading to the commission of the crime....”

99. In this case it has been proved on contradictions from the Investigating Officer (I/O) Chandi Charan Bera, that when statement of Thandamoni Hansda (PW-5) was referred to the I/O (PW-10) he stated that during investigation Thandamoni Hansda (PW-5) has stated to him that she used to run a small liquor business shop and Behari Murmu used to visit her house to drink liquor. He has further confirmed the statement on contradiction that Thandamoni Hansda during investigation has stated in her evidence that a relation grew up in between her and Behari Murmu which she is unable to disclose, and her husband came to learn about the said relation, and on 09/11/2013 in the evening when Binod was in house she asked Behari Murmu to go away from her house and then he went but again came back at 08:00PM and told that he is going for fishing.

100. Again when the statement of Thandamoni Hansda was referred to the I.O on contradictions he submitted that Thandamoni Hansda during investigation has stated to him that her husband before leaving the house took an ‘axe’ in the midnight and thereafter he returned alone and when she asked him about Behari Murmu, Binod Hansda did not reply and went to sleep and thereafter on 11/11/2013 the dead body of Behari Murmu was found in a paddy field of Gurucharan Hansda.

101. Further when the statement of Manik Hansda was referred to the I.O then on contradiction he has stated that Manik Hansda during investigation has stated in his statement under section 161 Cr.P.C., that Behari Murmu was having illicit relation with the wife of Binod Hansda and he heard cries in the night from the house of Binod Hansda.

102. Further when statement of Sunil Kumar Murmu was referred to the I.O and his attention was drawn then I/O has stated that witness Sunil Kumar Murmu during investigation has stated in his evidence under section 161 Cr.PC that wife of Binod Hansda used to sell illicit liquor and Behari Murmu used to visit her house to drink liquor and Behari Murmu was having illicit relation with the wife of Binod Hansda and when Binod Hansda came to learn about the relation he killed Behari Murmu.

103. The above evidences were also corroborated by the evidence of PW-7 Sombari Murmu, father of Behari Murmu, who stated that his son Behari Murmu was called by Binod Hansda from his home for work at his paddy field and again in the evening he was called by Binod Hansda and thereafter his son did not return. He further submitted that they went to catch fish in the night and thereafter his son did not return and his body was found at the paddy field of Gurucharan Hansda having severe cut injury on his forehead and neck.

104. However, as discussed above, the prosecution in this case has proved the motive of the accused sufficiently and for that reason the case of prosecution cannot be doubted or discarded as prayed for by the defence.

105. So, from the above discussion and it appears to this Court that all the chain of circumstances leading to commission of crime have been proved before this Court beyond reasonable doubt. The motive of commission of crime by the accused Binod Hansda for the reason that Behari Murmu was having illicit relation with his wife has sufficiently been proved. So, from the above discussion in this case which is based on circumstantial evidence, the motive for committing murder of Behari Murmu by Binod Hansda has sufficiently been proved.

106. So, from the above discussion it is crystal clear and has been proved beyond doubt before this Court that Behari Murmu was assaulted by sharp cutting weapon and after such assault he died due to the effects of above injuries which as per the opinion of doctor were anti-mortem and homicidal in nature. So, medical evidence also corroborates the substantive evidence in this case regarding reason of death of Behari Murmu which has been proved before this Court beyond reasonable doubt.

CORROBORATION FROM PRE & POST OCCURRENCE

WITNESSES

107. It appears from the evidence of Investigating Officer in this case that witness Thandamoni Hansda as stated before the I.O which has been proved after contradiction from I.O that she used to run a liquor shop at her house and Behari Murmu used to visit her house to drink liquor. And thereafter relationship grew up in between her and Behari Murmu which she did not disclose. It also appears from her evidence that when her husband Binod Hansda came to learn about the said illicit relation and then he went out from the home and thereafter returned at 08:00PM on the pretext of going for fishing. It also appears from the evidence that Binod Hansda at the time of leaving the home took an 'axe' in the midnight and thereafter he returned alone and when she asked about Behari Murmu, Binod Hansda did not reply anything and went to sleep and thereafter on 11/11/2013 the dead body of Behari Murmu was found in the paddy field of Gurucharan Hansda.

108. This evidence was duly corroborated by the evidence of PW-6 and PW-7. It has been proved that PW-7 has stated that his son was called and taken by Binod Hansda in the evening and thereafter his son did not return. Binod Hansda had interaction with his son and asked Behari Murmu to go with him in the night to catch fish and thereafter Behari Murmu did not return and his body was found at the paddy field of Gurucharan Hansda.

109. Further it appears from the evidence of I.O that when Binod

Hansda was taken into police custody during investigation he then made a statement that if he would be taken to his house he will help in identification and recovery of the offending 'axe' by which he murdered Behari Murmu.

110. It appears that the said 'axe' was produced in the court and identified by the I.O and marked as Material Object which was seized on proper seizure list dated 15/11/2013.

111. The above evidences/facts were corroborated by the evidence of PW-12 Dr. Pranab Ray who conducted post-mortem examination over the body of Behari Murmu and found the injuries as stated above being deep sharp cut injury in nature and he opined that the weapon which was used was heavy sharp cutting weapon.

112. So, from these evidences the case of the prosecution has duly been corroborated of which some are pre and some are post occurrence witnesses/objects.

SOURCE OF LIGHT

113. In this case it is undisputed, rather proved on evidence, that there was motive to kill Behari Murmu in the mind of Binod Hansda. It is proved on evidence that an illicit relation grew up in between Behari Murmu and the wife of Binod Hansda (Thandamoni Hansda) which when came to the notice/knowledge of Binod Hansda then he decided to murder Behari Murmu and for that reason he took Behari Murmu along with him on the pretext of catching fish in the night. He was also having 'axe' when he left house and thereafter he returned to the house in the said night and thereafter the body of Behari Murmu was found in the paddy field of Gurucharan Hansda. The 'axe' has already been identified and proved as Material Object in this case which was recovered after the disclosure statement of the accused Binod Hansda when he was taken to police custody by Investigating Officer (I/O) and the said portion of leading statement has been marked in this case as Exbt. P-8/PW-10.

114. The above is the source of light in this case which proved the prosecution case as discussed above.

115. In State of Rajasthan v. Smt. Kalki, AIR 1981 SC 1390 it was held by Hon'ble Supreme Court that while apprehending the evidence in a Criminal Case under section 302 of the Indian Penal Code it has to be seen whether the discrepancies pointed out by the defence in the Evidence are normal or material discrepancies. In the deposition of witnesses there are always normal discrepancies however, honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence, and the like. Material discrepancies are those which are not normal, and not expected of a normal person. In this case no material discrepancies have been pointed out by the defence.

116. ***“Last Seen Together” theory whether applicable in this case:-*** Hon'ble Supreme Court in Kanhaiyalal v. State of Rajasthan (AIR 2013 SC 1940) has been pleased to held that evidence on “last seen together” is a weak piece of evidence and conviction only on basis of “last seen together” without there being any other corroborative evidence against the accused, is not sufficient to convict the accused for an offence u/s. 302 IPC. Hon'ble Court has been held “12. The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. Mere non-explanation on the part of the appellant, in our considered opinion, by itself cannot lead to proof of guilt against the appellant.” “15. The theory of last seen the appellant having gone with the deceased in the manner noticed hereinbefore, is the singular piece of circumstantial evidence available against him. The conviction of the appellant cannot be maintained merely on suspicion, however strong it may be, or on his conduct. These facts assume further importance on account of absence of proof of motive particularly when it is proved that there was cordial relationship between

the accused and the deceased for a long time. The fact situation bears great similarity to that in *Madho Singh v. State of Rajasthan*, (2010) 15 SCC 588 : (AIR Online 2002 SC 681)”

117. Further Hon'ble Supreme Court in *Bodhraj v. State of J & K* (2002) 8 SCC 45 : (AIR 2002 SC 3164) has been pleased to held that “31. The last seen theory comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than accused being the author of crime becomes impossible. It will be hazardous to come to a conclusion of guilt in cases where there is no other positive evidence to conclude that the accused and the deceased were last seen together.

118. Now, it appears from the evidence of the prosecution witnesses i.e. I.O and when the statements of the witnesses were referred to him when the witnesses were declared hostile particularly of witness Thandamoni Hansda that on 09/11/2013 in the evening Behari Murmu came to his house and told that he is going for fishing and her husband Binod Hansda before leaving the house took an 'axe' in the midnight and thereafter returned home alone and when Thandamoni asked him about Behari Murmu, Binod Hansda did not reply and thereafter on 11/11/2013 the dead body of Behari Murmu was found in the paddy field of Gurucharan Hansda.

119. It further comes out from the evidence of PW-7 Sombari Murmu, the mother of Behari Murmu, that her son Behari Murmu was called by Binod Hansda from his home for work at paddy field and again he was called and taken in the evening by Binod Hansda that they will go and catch fish and have feast in the night. She has submitted that thereafter her son Behari Murmu accompanied Binod Hansda on the pretext of catching fish but did not return home since then. His body was found at paddy field of Gurucharan Hansda having severe cut injuries on his forehead and neck and Binod Hansda murdered her son.

120. Now, from the above evidences when they are subjected to the law of last seen theory it comes to the notice of Court rather proved that on the date of incident Behari Murmu was taken away by Binod Hansda on the pretext of catching fish and was last seen together with him and with no other person than Binod Hansda. Further the time gap in his death and not returning home was very small that rules out the possibility of any other person than the accused Binod Hansda, the author of crime. Further, this theory was also corroborated by the recovery of weapon of crime i.e. 'axe' at the instance of accused Binod Hansda during his police custody. So, the theory of 'last seen together' becomes applicable and relevant in the context of the facts and evidence of this case and has been proved.

121. In **Masalti Vs State of U.P**, the Hon'ble Apex Court held in a case involving a large number of offenders and a large number of victims as a matter of prudence support from two or three or more witnesses may be sought to sustain conviction. The Court observed as follows: -

"16..... where a criminal Court has to deal with evidence pertaining to the commission of an offence involving a large number of offenders and a large number of victims, it is usual to adopt the test that the conviction could be sustained only if it is supported by two or three or more witnesses who give a consistent account of the incident".

122. This view was explained in **Binay Kumar Singh V. State of Bihar** as follows:-

"31..... There is no rule of evidenced that no conviction can be based unless a certain minimum number of witnesses have identified a particular accused as a member of the unlawful assembly. It is axiomatic that evidence is not to be counted but only weighed and it is not the quantity of evidence but the quality that matters. Even the testimony of one single witness, if wholly reliable, is sufficient to establish the identification of an accused as a member of an unlawful assembly. All the same, when the size of the unlawful assembly is quite large (as in this

case) and many persons would have witnessed the incident, it would be a prudent exercise to insist on a least two reliable witnesses to vouchsafe the identification of an accused as a participant in the rioting. In Masalti V. state of U.P (AIR 1965 SC 202) a Bench of four Judges of this court has adopted such a formula. It is useful to extract it here”.

“.....where a criminal Court has to deal with evidence pertaining to the commission of an offence involving a large number of offenders and a large number of victims, it is usual to adopt the test that conviction could be sustained only if it is supported by two or three or more witnesses who give a consistent account of the incident”.

123. **In Duleswar V. State of Madhya Pradesh**, the same proposition was reiterated and described as a test of consistency. Nonetheless it was clarified more counting of heads or omission of names is not the sole determining factor. Other relevant factors may also be taken into consideration. The Bench Held as follows:

15..... *In regard to such a case involving multiple accused persons and several witnesses, it would be worthwhile to refer to the principles expounded in Masalti V. State of U.P (Masalti V. State of U.P, (1964)8SCR 133: Air 1965 SC 202), as reiterated in Chandra Sekhar Bind /Chandra Sekhar Bind v. state of Bihar (2001)8 SCC 690) in the following: (SCC.pp.692-93, Paras 9-10).*

“9. However, this is an incident in which a large number of accused had participated. The Constitution Bench of this Court has, in Masalti V. State of U.P (Masalti V. State of U.P, AIR 1965 SC 202) held that under the evidence act, trustworthy evidence given by a single witness would be enough to convict the accused persons, whereas evidence given by half a dozen witnesses which is not trustworthy would not be enough to sustain the conviction. It was held that where a criminal court has to deal with evidence pertaining to the commission of an offence involving a large number of offenders, it is usual to adopt the test that the conviction could

be sustained only if it is supported by two or three or more witnesses who give a consistent account of the incident. It was held that in a sense, the test may be describe as mechanical, but it cannot be treated as irrational or unreasonable. It was held that even though it is the quality of the evidence that matters and not the number of witnesses, still it is useful to adopt such a mechanical test.

10. *This two-witness theory has also been adopted by this Court in Binay Kumar Singh V. State of Bihar (Binay Kumar Singh V. state of Bihar, (1997) 1 SCC 283). It is held that there is no rule of evidence that no conviction can be based unless a certain minimum number of witnesses have identified a particular accused as a member of the unlawful assembly. It is held that it is axiomatic that evidence is not to be counted but only weighed and it is not the quantity of evidence but the quality that matters. It is held that even the testimony of one single witness, if wholly reliable, is sufficient to establish the identification of an accused as a matter of an unlawful assembly. It is held that all the same, when the size of the unlawful assembly is quite large and many persons would have witnessed the incident, it would be prudent exercise to insist on at least two reliable witnesses to vouchsafe the identification an accused as a participant in the rioting.”*

15.1. Thus, it is the quality of evidence that matters not the quantity ; and even the testimony of a single witness may be sufficient to establish the identify of an accused as a member of an unlawful assembly but, when the size of assembly is quite large and many persons have witnessed the incident; and when a witness deposes in general terms, it would be useful to adopt the test of consistency of more than one witness so as to remove any doubt about identity of an accused as a member of the assembly in question. However, even if adopting such a test of consistency, what is to be looked for is the “consistent account of the incident” and the requirement of consistency cannot be overstretched as if to search for repetition of each and every name of the accused in each and every

testimony. In other words, the comprehension of overall evidence on record is requisite: and mere counting of heads or mere recitation of names or omission of any name in the testimony of any particular witness cannot be decisive of the matter. In such facts and circumstances, even the relevance of the corroborating facts and factors like that of recovery of weapons or any other article co-related with the crime in question cannot be ignored altogether.

Similarly, in State of Maharashtra V. Ramlal Devappa Rathod and others, (2015) 15SCC 77 the rule in Masalti (Supra) was held inapplicable to cases where overt rule in the offence is clearly spelt out against a named assailant. The Court held:-

124. “ *We do not find anything in Masalti (Masalti V. State of U.P, AIR 1965 SC 202) which in any way qualifies the well settled principle that the conviction can be founded upon the testimony of even a single witness if it establishes in clear and precise terms, the overt acts constituting the offence as committed by certain named assailants and if such testimony is otherwise reliable*”. So, for the evidence in hand and the documents marked as Exhibits viz injury reports and from the evidence of doctors as well from the contradictions of I.O’ s evidence it has been proved beyond reasonable doubt before this Court that though the private prosecution witnesses did not support the prosecution case and were declared hostile however, from the evidence of I.O on contradiction and from documents marked exhibit in this case as discussed above, the case has been proved beyond reasonable doubts.

FINDINGS

125. So, from the discussion made above it has been proved before the Court beyond doubt from the circumstantial evidence and the principle of last seen theory together, that Binod Hansda, husband of Thandamoni Hansda, had motive to murder Behari Murmu due to admitted illicit relation in between his wife Thandamoni Hansda and Behari Murmu and

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for the said reason he took Behari Murmu with him to catch fish and thereafter he murdered Behari Murmu with the heavy sharp cutting weapon (axe) which was subsequently recovered on the basis of his disclosure statement. It has further been proved that he was the only person who was last seen with Behari Murmu before his death.

126. Thus having regard to the totality of facts and circumstances of the case, evidence adduced by the prosecution and the law discussed above it has been proved reasonable doubt by the prosecution that the accused Binod Hansda has committed the offences punishable under section 302/201 of the Indian Penal Code. Therefore, this Court finds and holds the accused Binod Hansda has committed the murder of Behari Murmu and concealed the evidence relating to the said murder.

127. Hence,

it is,

ORDERED

that accused namely Binod Hansda is found guilty for the offences punishable under section 302/201 of Indian Penal Code and he is convicted under section 235(2) of the Cr.P.C.

In view of the above the convict namely Binod Hansda who is taken into custody will be heard in respect of sentence to be imposed by this Court on 19/03/2026 at 10:30AM.

List 19/03/2026 for examination of convict on question of sentence under section 235(2) of the Code of Criminal Procedure.

Superintendent, Jhargram Correctional Home is directed to keep the accused in segregation.

Dictated and corrected by me

(Arvind Mishra)
Addl. Sessions Judge,
2nd Court, Jhargram

(Arvind Mishra)
Addl. Sessions Judge,
2nd Court, Jhargram

Further hearing and pronouncement of sentence on 19/03/2026.

Today has been fixed for hearing of the convict on the quantum of sentence and accordingly the record is taken up for said hearing.

Ld. PP has submitted on the quantum of sentence to be imposed stating inter alia that the section 302 IPC provides death or imprisonment for life, considering the circumstances in which the offence was committed, which has been transpired from the evidence on record, he prayed for passing order for capital punishment which Court may think proper.

Ld. Advocate for the convict has submitted to pass appropriate sentence as per law in this case.

Heard Ld. PP and Ld. Defence Counsel.

Ld. Defence Counsel has submitted that in this case that vital witnesses of this case have been declared hostile and accordingly there was no substantive evidence except the evidence of the I.O., PM Doctor, and other witnesses.

On the other hand, Ld. PP has submitted that prosecution had presented irrefutable evidence before the Court on the basis of circumstances and further argued that evidence form a robust foundation for the prosecution case, leaving no room for doubt. And in the light of gravity of case, Ld. Public Prosecutor, advocated for imposition of capital punishment.

In this case charges were framed against the convict Binod Hansda under section 302/201 IPC and the conviction is founded on a robust framework of circumstantial evidence, which when viewed holistically, forms an unbroken pointing unequivocally to the guilt of the convicts. The evidence presented in this case reveals a disturbing and comprehensive account of the crime and the justification for conviction is multifaceted and compelling.

The nature of crime in this case is particularly heinous, characterized

by its brutality towards victims. The description of crime as “diabolic” towards victims emphasizes the extreme depravity of the act.

While the strength of circumstantial evidence is a critical factor in determining the guilt, the gravity of offence takes center stage when considering the appropriate punishment, particularly when the capital punishment is on the table. The Indian Judicial System, like many others around the world, has established stringent criteria for imposing the death penalty, reserving it for cases that are exceptionally heinous and shocked the collective conscience of the society.

In evaluating the severity of the case, several factors come into play. The brutality of crime is a primary consideration which goes beyond the pale of ordinary criminal behaviour and the manner and motive for which the crime was committed speaks a deliberate and sustained intent to cause harm, elevating the gravity of offence.

The social impact of such crime cannot be overstated. Heinous acts of this nature instill fear in the community and erode the fabric of the social trust. They create a sense of insecurity, particularly among vulnerable groups and can have long lasting effects on the collective psyche of the society. The ripple effect of such crime extend far beyond the immediate victims and their families, touching the lives of countless individuals who may alter their behaviour or live in fear as a result. This broader impact on society is a significant consideration when evaluating the severity of the crime and contemplating appropriate punishment.

The apparent absence of any extenuating factors for the convict’s actions further compounds the severity of the case. Mitigating circumstances, such as mental illness, extreme provocation or a history of abuse often play a role in tampering sentence. But in this case lack of such mitigating factors leaves little room for leniency. The absence of any apparent justification or explanation for such a brutal act adds to its reprehensibility and may influence the court’s consideration of appropriate

punishment.

While considering the imposition of capital punishment, courts must grapple with a complex web of legal, moral and societal considerations. The principle of proportionality is paramount – the punishment must fit the crime. In cases of extreme brutality and cruelty, where the offence shocks the conscience of society, the argument for the ultimate punishment gains strength. However, this must be balanced against the principles of reformative justice and the sanctity of human life.

The possibility of reformation is another crucial factor that court must consider. The judicial system must weigh whether the convict, given the nature and circumstances of their crime, shows any potential for rehabilitation and reintegration into society. The assessment often involves considering the convicts' background, behaviour during trial, expressions of remorse and expert opinion on their psychological profile.

The court's duty in such cases extends beyond mere punishment; it must consider the broader implications of its decision on society. The impact of the crime on victims' family and the larger community is a heart-wrenching. The loss of life with "bright prospect" represents not just a personal tragedy but a loss to the nation of potential talent and contribution. The court must weigh this loss heavily on its deliberations, considering how the sentence can reflect the value, society places on human life and potential.

Keeping all the above aspects, appropriate sentence should be pronounced. In view of the manner in which the offence was committed by the convict, as proved by the prosecution, according to me, one can only say that the action of the convict is barbaric and brutal. The gruesome acts of the convict was diabolic in their conception and cruel in execution.

On being asked convict Binod Hansda said, "I do not know anything regarding the incident. I did not murder Behari Murmu and I was falsely implicated in this case."

Ld. Advocate for the convict Shri Nabendu Ghoshal has submitted that convict Binod Hansda has his wife and having three daughters and one minor son and there is no one to look after them. Accordingly, he prayed for leniency before the Court for not imposing the punishment.

Ld. PP-in-charge Shri Prabir Pal has submitted that at the time of incident the deceased Behari Murmu was 26 years old and this accused Binod Hansda was 50 years old. At that time it was a cold blood murder and he was taken by the accused on the pretext of catching fish and thereafter he murdered him and accordingly, Ld. PP-in-charge has prayed for imposition of capital punishment of the accused.

The point to be decided whether the act of convict falls within the ambit of rarest of rare case or not. Evaluating whether this case meets threshold for capital punishment, the court must carefully analyses precedents set by higher courts, particularly the Hon'ble Supreme Court regarding the application of death penalty in cases of similar gravity. This analyses involves examining how previous cases of comparable brutality and circumstances were adjudicated and the reasoning behind those judgments.

In Bachan Singh vs State of Punjab reported in (1980) 2 SCC 684, the observation of the Hon'ble Apex Court was that the following guidelines should be kept in mind:-

“(i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.

(ii) Before opting for the death penalty the circumstances of the ‘offender’ also require to be taken into consideration along with the circumstances of the ‘crime’.

(iii) Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only

provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.

(iv) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weight-age and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.”

This observation of the Hon’ble Apex Court was also followed in another decision of the Hon’ble Apex Court as reported in (2002) 6 SCC 81 Krishna Mochi v. State of Bihar.

It is fact that in a civilized society a tooth for a tooth, and a nail for a nail or death for death is not the rule, but it is equally true that when a man becomes a beast and menace to the society, he can be deprived of his life according to the procedure established by law.

I want to rely upon another decision of the Hon’ble Apex Court as reported in (1983) 3 SCC 470 (Machhi Singh v. State of Punjab).

In the said case, the Hon’ble Court made the following observation which is very much relevant:-

*“The reasons why the community as a whole does not endorse the humanistic approach reflected in “death sentence-in-no-case” doctrine are not far to seek. In the first place, the very humanistic edifice is constructed on the foundation of “reverence for life” principle. When a member of the community violates this very principle by killing another member, the society may not feel itself bound by the shackles of this doctrine. **Secondly**, it has to be realized that every member of the community is able to live with safely without his or her own life being endangered because of the protective arm of the community and on account of the rule of law enforced by it. The very existence of the rule of law and the fear of being brought to book operates as a deterrent for*

*those who have no scruples in killing others if it suits their ends. Every member of the community owes a debt to the community for this protection. When ingratitude is shown instead of gratitude by “killing” a member of the community which protects the murderer himself from being killed, or when the community feels that for the sake of self-preservation the killer has to be killed, the community may well withdraw the protection by sanctioning the death penalty. But the community will not do so in every case. It may do so “in rarest of rare cases” when its collective conscience is so shocked that it will expect the holders of the judicial power center to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty. The community may entertain such a sentiment when the crime is viewed from the platform of the motive for, or the manner of commission of the crime, or the anti-social or abhorrent nature of the crime*****”.*

In *Monoj & Ors. Versus State of Madhya Pradesh* the Hon’ble Apex Court as reported in 2022 SCC OnLine SC 677, has observed:

*“209. There are numerous other circumstances justifying the passing of the lighter sentence; as there are countervailing circumstances of aggravation. “We cannot obviously feed into a judicial computer al such situations since they are astrological imponderables in an imperfect and undulating society.” Nonetheless, it cannot be overemphasized that the scope and concept of mitigating factors in the area of death penalty must receive a liberal and expansive construction by the courts in accord with the sentencing policy writ large in Section 354(3). **Judges should never be bloodthirsty.** Hanging or murderers has never been too good for them. Facts and Figures, albeit incomplete, furnished by the Union of India, show that in the past, courts have inflicted the extreme 91 Bachan Sing (para 202 and 206). 66 penalty with extreme infrequency – a fact which arrests to the caution and compassion which they have always brought to bear on the exercise of their sentencing discretion in so grave*

a matter. It is, therefore, imperative to voice the concern that courts, aided by the brood illustrative guidelines indicated by us, will discharge the onerous function with evermore scrupulous care and humane concern, directed along the highroad of legislative policy outlined in Section 354(3) viz. **that for persons convicted of murder, life imprisonment is the rule and death sentence on exception.** A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed.”

At the same time, I want to rely upon some other decisions of the Hon'ble Apex Court as reported in (2008) 13 SCC 767 (Swamy Shraddananda (2) vs. State of Karnataka) which was followed in 2024 SCC Online SC 3769 (Sambhubhai Raisangbhai Padhiyar vs. State of Gujrat). In Sambhubhai Raisangbhai Padhiyar vs. State of Gujrat, the Hon'ble Apex Court has observed:

“32. The Trial Court has imposed the sentence of death and the High Court has confirmed the same. It is time for us to draw up a balance sheet of the aggravating and mitigating circumstances to decide whether the case falls in the category of rarest of rare case. **We also need to examine whether the sentence of life imprisonment is foreclosed and the possibility of reformation is completely ruled out.**

36. Considering the overall facts and circumstances, we hold that the present is not a case where it can be said that the possibility or reformation is completely ruled out. **The option of life imprisonment is also not foreclosed. The case does not fall in the category of rarest or rare case. We are of the opinion that ends of justice would be met if we adopt the parh carved out in Swami Shraddananda Vs. State of Karnataka (2008) 13 SCC 767.**

The judiciary's primary responsibility is to uphold the rule of law

and ensure justice based on evidence, not public sentiment. It is of prime importance that the court maintain its objectivity and impartiality by focusing solely on the facts and evidence presented during the trial, rather than being swayed by public opinion or emotional reactions to the case. Furthermore, the court must consider the rights and circumstances of the accused, as well as the broader implications of its decisions. In this particular case, it is crucial to note that there is no evidence of prior criminal behaviour or misconduct by the convict.

The realm of modern justice, we must rise above the primitive instinct of “an eye for an eye” or “a tooth for a tooth” or “nail for a nail” or “a life for a life”. Our duty is not to match brutality with brutality, but to elevate humanity through wisdom, compassion and a deeper understanding of justice. The measure of a civilized society lies not in its ability to exact revenge, but in its capacity to reform, rehabilitate and ultimately to heal.

Referring to the landmark Bachan Singh case, which established guidelines for imposing the death penalty, it is evident that this case does not meet the stringent criteria for being classified as “rarest or the rare.” The Hon’ble Supreme Court has consistently emphasized that the death penalty should be used only in exceptional circumstances where the collective conscience of the community is so shocked that it expects the holders of judicial power to inflict the death penalty.

In conclusion, this case calls for a carefully considered and appropriate sentence that balances the gravity of the crime with the principles of justice, rehabilitation and the preservation of human dignity.

Considering all the circumstances, the impact of the incident on the society, I think it prudent to pass the following sentence.

Hence,

it is,

ORDERED

that convict namely Binod Hansda is sentenced to

1. U/s. 201 IPC for imprisonment for five (05) years for convict and fine of

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Rs. 5000/- for convict i.d to suffer simple imprisonment for one month;
2. U/s. 302 IPC for rigorous imprisonment for life for convict and fine of
Rs. 10,000/- for convict i.d to suffer simple imprisonment for one month;

All the sentences will run concurrently.

Period of detention in connection with this case at the time of
investigation will be set off as per relevant provision of Cr.P.C.

Let a copy of this judgment be handed over to each of the convicts,
free of cost.

The convict has been informed in open court in Bengali language
(which is their mother tongue) that he has the right to prefer appeal against
this judgment and that he has the right to legal aid for filing the said appeal
by taking assistance of District Legal Services Authority, Jhargram.

The Superintendent of Jhargram Special Correctional Home is
directed to assist the convict, so that he may get legal aid, if applied for.

The Secretary, DLSA, Jhargram is directed to take proper steps so
that the convict may prefer appeal from J/C by taking legal aid, if applied
for.

The judgment be kept with the record.

Dictated and corrected by me

(Arvind Mishra)
Addl. Sessions Judge,
2nd Court, Jhargram

(Arvind Mishra)
Addl. Sessions Judge,
2nd Court, Jhargram